(33,888)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928

No. 579

INTERNATIONAL SHOE COMPANY, APPELLANT,

vs.

STRATTON SHARTEL, ATTORNEY GENERAL OF THE STATE OF MISSOURI, AND C. EUGENE STEPHENS, STATE TREASURER OF THE STATE OF MISSOURI

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

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[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, WESTERN MISSOURI, CENTRAL DIVISION

No. 223

INTERNATIONAL SHOE COMPANY, a Corporation, Complainant,

vs.

STRATTON SHARTEL, Attorney General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, Defendants

MINUTE ENTRY OF FILING OF COMPLAINT AND STIPULATION—July 9, 1928

Now on this day comes the complainant, by its solicitors, and files its bill of complaint against the defendants; there is also filed a stipulation of counsel that defendants will not enforce or attempt to enforce against complainant the franchise tax bill.

IN UNITED STATES DISTRICT COURT

[Title omitted]

BILL OF COMPLAINT—Filed July 9, 1928

To the Honorable Judges of the District Court of the United States for the Central Division of the Western Judicial District of Missouri:

The complainant, International Shoe Company, a cor-[fol. 2] poration, brings this, its bill of complaint, against the above named defendants and respectfully shows unto this Honorable Court, as follows:

I. The Complainant International Shoe Company, avers that it is a corporation duly organized under and by virtue of the laws of the State of Delaware and authorized to engage and engaged in the business of manufacturing and selling shoes and was duly licensed and qualified to do business in the State of Missouri on the 22nd day of March, 1921, and ever since has been and now is so licensed and qualified and since said 22nd day of March, 1921, complainant has maintained and now maintains its principal business office in the City of St. Louis, Missouri; that defendant Stratton Shartel is the duly qualified and acting Attorney General of the State of Missouri and as such is charged with the duty of enforcing the payment to said state of corporation franchise taxes that the State Treasurer of said state reports to him are delinquent; that defendant C. Eugene Stephens is the duly elected, qualified and acting State Treasurer of the State of Missouri, and as such is charged with the duty of the collection of corporation franchise taxes ascertained, levied and assessed under the laws of said state and of certifying to the Attorney General a list of the corporations delinquent in the payment of their franchise taxes; that plaintiff, by reason of its incorporation under the laws of Delaware, is a citizen and resident of the State of Delaware; that the said defendants are bona fide citizens of the State of Missouri and reside in the City of Jefferson City, County of Cole and State of Missouri in the Central Division Western Judicial District.

II. This is a suit of a civil nature, wherein the matter in controversy exceeds the sum of three thousand dollars exclusive of interest and costs, arising under the Constitution of the United States, especially under Section 1 of the Fourteenth Amendment and under Section 8 of Article 1 of said Constitution, and the purposes of said suit are: (a) To have declared unconstitutional and void Section 12 [fol. 3] of the Stock Corporation Act of the State of Missouri as an amendment or supplement to the Corporation Annual Franchise Tax Law of Missouri and the said Franchise Tax Law of the State of Missouri, if said section 12 be an amendment or supplement thereto; (b) to have declared unconstitutional and void the action hereinafter re-

ferred to of the State Tax Commission of Missouri in computing under the laws of Missouri complainant's corporation franchise taxes for the year 1928; (c) to have declared unconstitutional and void the action of the Auditor of the State of Missouri in making out and delivering to the State Treasurer of said state a tax bill in conformity with said computation of said Tax Commission; (d) to have said tax bill and the taxes represented thereby, hereinafter referred to, adjudged unconstitutional and void; (e) to remove from complainant's property in the State of Missouri the cloud cast upon the title thereof by the said franchise tax bill and the taxes represented thereby; and (f) to restrain the enforcement of the said Corporation Annual Franchise Tax Law of Missouri as amended or supplemented by said Section 12 of the said Stock Corporation Act according to the construction of said section 12 by the Supreme Court of Missouri, by enjoining and restraining defendants from collecting or attempting to collect from complainant said franchise taxes assessed and levied against complainant, all upon the ground that said Corporation Annual Franchise Tax Law as supplemented or amended by said Section 12 of the Stock Corporation Act and the assessment of franchise taxes thereunder are unconstitutional and void in the particulars hereinafter set forth.

III. Complainant avers that it was incorporated under the laws of the State of Delaware, and under its charter and the laws of said state it is authorized to issue an aggregate of 4,250,000 shares of stock, of which 250,000 were to be preferred shares of the par value of $100.00 each, amounting to the aggregate nominal or par value of $25,000,000.00, and 4,000,000 were to be shares without nominal or par value; that for the consideration of $10,000,000.00, or $100.00 per share paid to and received by it, complain-
[fol. 4] ant issued and there are now outstanding 100,000 of said authorized preferred shares, and for the consideration of $36,082,631.09, or $9.60 per share paid to and received by it, complainant has issued and there are now outstanding 3,760,000 of its said authorized shares without nominal or par value.

That by action of its board of directors under and in conformity with complainant's charter and by-laws and as required by the laws of the State of Delaware, the aforesaid consideration received for said shares was made and is complainant's capital or paid-in capital stock or stated capital.

That therefore complainant's outstanding or paid-in capital stock is $46,082,631.09, of which $10,000,000.00 is divided into and is represented by 100,000 shares of preferred stock of the par value of $100.00 each, issued and outstanding, and $36,082,631.09 is divided into and represented by 3,760,000 shares of common stock without par value, issued and outstanding, and its surplus as shown by its books and its return to the State Tax Commission of Missouri is $44,601,288.95, and its indebtedness is $6,485,156.20, making a total of $51,086,445.15.

IV. Complainant avers that in the prosecution of its business it owns and operates forty-three shoe factories, of which twenty-four are located in the State of Missouri (two of which are in Jefferson City), nine in the State of Illinois, nine in New Hampshire and one in Kentucky; that the output of its factories is sold by it in intrastate, interstate and foreign commerce; that the value of all of complainant's property and assets employed by it in said business is $97,169,076.24, of which approximately 54 per cent, or $52,956,249.12, is located in the State of Missouri, and approximately 46 per cent, or $44,212,827.12 is located in states other than Missouri.

That the total capacity of complainant's aforesaid factories is approximately 210,000 pairs of shoes per day; that complainant solicits and obtains orders (1) by traveling salesmen or drummers, who go to the customer's place of business and there procure written orders, which are forwarded to complainant's main office in St. Louis, Mis- [fol. 5] souri, or to its offices in New York City, New York; Boston, Massachusetts; Chicago, Illinois, or Manchester, New Hampshire; (2) by printed catalogues and circulars sent to customers through the mails, and (3) by personal presence of customers and their representatives at the offices and sample rooms of complainant in the City of St. Louis, Missouri, and the other cities aforesaid; that the

great bulk of complainant's orders is procured through the solicitation of its traveling salesmen and drummers, who periodically each season call upon the customers at their places of business; that all orders, regardless of how the particular transaction is initiated, are by express terms made subject to approval by complainant at its offices in said cities, and no order is binding upon the complainant until so approved and accepted, and that bills for shoes sold by complainant are payable in said cities.

Complainant avers that under the foregoing method of doing business by far the greater amount of its shoes are sold and shipped in interstate and foreign commerce; that customarily not more than 5¼ per cent of its aggregate annual sales are made to customers in the State of Missouri; that during the year 1927 complainant manufactured in its factories located in the State of Missouri shoes of the value (and which were sold for the amount) of $81,424,270.67, and during the same period it sold to customers in the State of Missouri shoes in the amount and value of $6,535,589.78. During the same period it manufactured in its factories located outside the State of Missouri shoes in the amount and value (and which were sold for the amount) of $42,882,063.16, which it sold and shipped to customers in states other than Missouri and to customers in foreign countries.

Complainant states that, in addition to its qualifying fee paid to the State of Missouri, it has paid annually to the City of St. Louis and other cities in the state and to the State of Missouri its general property taxes upon its real estate and personal property located in said cities and state, and also its manufacturer's and merchant's license taxes. That these taxes paid by it for the year 1927 [fol. 6] amounted to: General property taxes, $69,775.19; manufacturer's license tax, $67,889.15, and merchant's license tax, $59,703.78, an aggregate of $197,386.12.

V. Complainant further avers that in 1917 the General Assembly of the State of Missouri passed an Act known as the Corporation Annual Franchise Tax Act, which was approved by the Governor April 9, 1917, which appears in the Session Laws of Missouri for the year 1917, beginning on page 237; that the sections of this bill were carried forward and appear in the Revised Statutes of Missouri 1919

as sections 9836 to 9848, both inclusive; that in 1921 the General Assembly of the State of Missouri, in extra session, passed, and on August 4, 1921, the Governor approved, an act set forth in the Laws of Missouri, 1921, extra session, beginning on page 121, repealing certain sections of said Corporation Annual Franchise Tax Act and enacting new sections in lieu thereof; that said new sections, with the unrepealed old sections of said act now constitute and are hereinafter referred to as the Corporation Annual Franchise Tax Law of the State of Missouri, and are copied and set forth in appendix A, attached hereto and by this reference thereto are made a part of this bill of complaint as though said sections were herein set forth in extenso, and it is provided by Sections 9836 and 9838 of said Corporation Annual Franchise Tax Law as follows, to-wit:

"Sec. 9836. Annual Franchise Tax.—Every corporation organized under the laws of this state shall in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the State of Missouri equal to one-twentieth of one per cent of the par value of its outstanding capital stock and surplus, or, if such corporation employs a part of its capital stock in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one per cent of its outstanding capital stock and surplus employed in this state, and for the purposes of this article such corporation shall [fol. 7] be deemed to have employed in this state that proportion of its entire outstanding capital stock and surplus that its property and assets in this state bear to all its property and assets wherever located. Every corporation *not organized under the laws of this state*, and engaged in business in this state, shall pay an annual franchise tax to the State of Missouri equal to one-twentieth of one per cent of the *par value of its capital stock* and surplus *employed in business in this state*, and for the purpose of this article such corporation shall be deemed to have employed in this state that proportion of its *entire capital stock* and surplus that its property and assets in this state bear to all its property and assets wherever located." (Emphasis ours.)

"Sec. 9838. State Tax Commission to Determine Amount—State Auditor to Make Tax Bills, When—Taxes,

When Due, etc.—The State Tax Commission, or the State Board of Equalization, as the case may be, shall, on or before the 20th day of March in each year, determine from the facts reported, and from any facts within or coming to its knowledge, *the proportion of the capital stock and surplus of each corporation employed in business in this state* and the amount of tax each corporation is liable to pay under the provisions of this article, and shall report the same to the State Auditor, who shall make out a tax bill therefor against each corporation and shall deliver the same to the State Treasurer and charge him therewith. The taxes provided for in this article shall be paid on or before the 15th day of May in each year and shall be due and payable to the State Treasurer without notice, who [fol. 8] shall make out and deliver a receipt therefor, which shall recite that the corporation named therein has paid its annual franchise tax under the provisions of this article for the year ending 31st day of the following December." (Emphasis ours.)

VI. Complainant avers that conformably with the requirements of Section 9837 of said Corporation Annual Franchise Tax Law and upon the form prescribed therefor by said State Tax Commission of Missouri and within the time prescribed therefor by said section, to-wit, on the 28th day of February, 1928, complainant made its corporation franchise tax report. That said report was signed and sworn to before a notary public by complainant's treasurer.

Complainant states that said report sets forth all of the information called for in said blank and required by said Section 9837 of said Corporation Annual Franchise Tax Law, and to inquiries 4 to 16, inclusive, in said blank and said section 9837 answers were made on behalf of complainant through its treasurer as follows:

4.	Authorized capital stock:		
	Common		4,000,000 shares
	Preferred	$25,000,000.00	
5.	Capital stock subscribed:		
	Common	$36,082,631.00	3,700,000 shares
	Preferred	10,000,000.00	100,000 shares
		$46,082,631.00	
6.	Capital stock issued and outstanding	$46,082,631.00	

7.	Capital stock paid up	46,082,631.09	
8.	Par value of stock:		
	Common	No par value	
	Preferred		$100.00 per shares
8½.	Paid in for each share of non par stock		$9.00

[fol. 9]

9.	Clear value of stock, inclusive of surplus	$90,683,920.04	
10.	Surplus and undivided profits	$44,601,288.95	
11.	Nature and kind of business		Shoe Manufacturing
	(a) Location of all places of business		
	(See schedule attached.)		
12.	Clear market value of property and assets in the State of Missouri	$52,956,249.12	
	(a) Give amount of encumbrance on assets within the State of Missouri	3,534,351.76	
	(b) Give net value of assets in Missouri after deducting encumbrances	49,421,897.36	
13.	Clear market value of property and assets without the State of Missouri	44,212,827.12	
	(a) Give amount of encumbrances on assets without the State of Missouri	2,950,804.44	
	(b) Give net value of assets without Missouri after deducting encumbrances	41,262,022.68	
14.	Clear market value of total property and assets	97,169,076.24	
	(a) Answer to 14 should be the sum total of answers to questions 12 and 13.		
15.	Give total amount of liabilities (do not include capital and surplus)	6,485,156.20	
16.	Change, or changes, if any, in the above particulars made since the last annual report		

And complainant avers that the information contained in said report is true.

It thus appears, and complainant avers the facts to be, that complainant has a total outstanding or paid-in capital stock, or stated capital, of $46,082,631.09, a surplus of $51,086,445.15, total property and assets of the value of $97,169,076.24, of which there are in the State of Missouri $52,956,249.12, or about 54 per cent of its total property and assets.

VII. Complainant states that the State Tax Commission [fol. 10] of Missouri ever since the enactment of the aforesaid sections constituting the Missouri Corporation Annual Franchise Tax Law until now, has construed said sections to require said Commission to determine as the amount of franchise taxes to be paid by each foreign corporation having nonpar stock and doing business in Missouri to be one-twentieth of 1 per cent of the outstanding or paid-in capital stock, or stated capital, and surplus employed by such corporation in its business in this state, and has construed said Section 9836 of said Corporation Annual Franchise Tax Law to mean that such a corporation should be deemed to have employed in its business in this state that proportion of its paid-in or stated capital and surplus that its property and assets is this state bear to all its property and assets, wherever located. That under such construction of said franchise tax laws said Tax Commission has heretofore uniformly determined complainant's annual franchise taxes to be one-twentieth of 1 per cent of so much of its paid-in or stated capital and surplus as was employed by it in this state, and said Tax Commission has uniformly heretofore determined annually that the amount of capital stock and surplus employed by complainant in this state was the same proportion of its total outstanding or paid-in capital stock and surplus that its property and assets in this state bore to all of its property and assets wherever located.

Complainant avers the fact to be and, under the aforesaid construction of said franchise tax laws which said Tax Commission has heretofore held and applied, said Commission would and should have found that complainant employs in its business in this state 54 per cent of its outstanding or paid-in capital stock of $46,082,631.09 and surplus of $51,086,445.15, or $52,956,249.12, and that complainant's franchise tax for the year ending December 31, 1928, is one-twentieth of 1 per cent of said amount, or $26,478.12.

But complainant states that said State Tax Commission accepted as true the information contained in complainant's aforesaid report, and, basing its actions and findings solely upon said information set forth in said report, de- [fol. 11] termined and so reported to the State Auditor of the State of Missouri that complainant's entire capital

stock and surplus are $386,000,000.00; that it has 54 per cent of its property and assets in Missouri; that, therefore, it employs in its business in the State of Missouri 54 per cent of said entire capital stock and surplus, or $208,440,000.00, and that complainant is liable to pay corporation franchise taxes for the year ending December 31, 1928, of one-twentieth of 1 per cent thereof, or $104,220.00.

That said State Tax Commission's figures of $386,000,000.00 as complainant's capital stock and surplus are arbitrary, fanciful and without basis in fact and were arrived at by said Tax Commission by adding to the $10,000,000.00 paid-in preferred stock capital an amount equal to the outstanding 3,760,000 common shares multiplied by $100.00 per share, to-wit, $376,000,000.00, despite the fact that complainant has received for said no-par common stock as paid-in capital stock, but $9.60 per share, or $36,082,631.09.

Complainant states that pursuant to said report made to him by said Tax Commission and as required by the aforesaid section 9838, said State Auditor of the State of Missouri made out a tax bill against complainant for said sum of $104,220.00 and delivered the same to defendant C. Eugene Stephens, State Treasurer of the State of Missouri, for collection from complainant; that in consequence of such determination by said State Tax Commission as aforesaid and of the erroneous and unconstitutional method of computation employed by it, and by virtue of said tax bill so issued against this complainant as aforesaid, defendants claim that complainant is indebted to the State of Missouri on account of its annual franchise taxes for the year 1928 in the total sum of $104,220.00; that defendant Stephens, as State Treasurer, and defendant Shartel, as Attorney General, have made demand upon complainant for the payment of said sum; that complainant offered to pay to said State Treasurer prior to June 1, 1928, the sum of $26,748.12 in [fol. 12] full payment of its franchise taxes for the year ending December 31, 1928, but said offer was refused and said State Treasurer, on June 1, 1928, certified to defendant Attorney General the name of complainant as delinquent in the payment of said taxes and said Attorney General threatens to, and unless restrained by this Honorable Court will, proceed to collect from complainant by suit, as provided in Section 9843 of said Corporation Annual Franchise Tax Law, the said sum of $104,220.00, together with the interest

and penalties provided by said section, to-wit, 1 per cent per month and in addition a penalty of 25 per cent of said taxes, and complainant avers that under the provisions of the aforesaid Section 9842 of said Corporation Annual Franchise Tax Law said franchise tax and said penalties purport to be a first lien on all the property and assets of this complainant within the State of Missouri and constitute a cloud upon the title to all of said property.

VIII. Complainant further avers that said State Tax Commission of Missouri, in computing said taxes, departed from its former uniform practice and its former construction as aforesaid of said Missouri Corporation Annual Franchise Tax Laws, and employed the erroneous and unconstitutional computation hereinabove set forth in consequence of the so-called Stock Corporation Act of the State of Missouri hereinafter referred to and the interpretation thereof by the Supreme Court of Missouri on the 4th day of February, 1928, in the case No. 28,080 in said court of State v. Pierce Petroleum Corporation, reported in volume 2 (2d) Southwestern Reporter, at page 790.

Complainant states that in the year 1921, the General Assembly of the State of Missouri passed a certain bill known as Senate Bill 800, which said act was approved by the Governor of the state on April 12, 1921, and appears in the Sessions Laws of Missouri for the year 1921, beginning on page 661. Said bill will be herein referred to as the Stock Corporation Act. A copy thereof is attached hereto as Appendix B, and by this reference thereto is made a part of this bill of complaint as though set forth herein. The title of said act is as follows:

[fol. 13] "An act authorizing stock corporations, other than building and loan associations, trust companies and corporations authorized by law to transact the business of banking or insurance, to make provisions, upon formation, reorganization, merger or consolidation, for the issue of either or both preferred or common shares without nominal or par value; regulating the same and such corporation, and prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner."

That it is provided in and by section 12 of said act as follows:

"Sec. 12. Taxes to be Paid—How Computed.—*For the purpose of computing any organization taxes required to be paid under the laws of this state, and such tax or taxes, if any, the determination of which is based on the par value of shares of stock and not on the number of shares or the actual or ascertained value thereof and for the purpose of any statutory provision limiting the relation between indebtedness and capital stock, each share of stock without any nominal or par value, under the provisions of this act, shall be considered the equivalent of a share having a nominal or par value of one hundred dollars.* For the purpose of any report, return or similar instrument wherein the amount or par value of stock or capital or capital stock paid in, outstanding or retired is required to be stated, in the case of shares without nominal or par value, and with respect to such shares, the amount or par value thereof, outstanding or paid in prior to the date of such report, return or similar instrument, shall be considered as the amount of stated capital in excess of the total par value of outstanding shares having a par value, if any, and the amount or par value thereof retired shall be considered as the amount [fol. 14] of decrease, if any, of stated capital due to such retirement. In the case of shares without nominal or par value presently to be issued, in lieu of stating the amount or par value thereof in any such certificate, report, return or similar instrument, a description of the consideration received or to be received therefor, or of the assets received or to be received for which the proceeds from the disposition of the said shares are to be used to pay or reimburse the treasury of the company, and the net changes, if any, in the corporations' stated capital, due to the receipt of such consideration, shall be stated. In the case of shares without nominal or par value authorized but unissued and not presently to be issued, it shall not be necessary, in such report, return or similar instrument, to show the amount or par value thereof, and only the number thereof need be stated. For the purpose of any statutory provision limiting the amount of capital stock which a corporation may have, or prescribing the portion or amount or par value of stock or capital which must be subscribed

or paid in cash or otherwise, whether at the time of formation, before commencing to do business, or from time to time subsequent thereto, the stated capital of a corporation having shares without nominal or par value, shall be deemed to be its capital stock or the amount thereof. Nothing in this act contained shall be construed as excepting or relieving a corporation from any requirement of law as to the amount in dollars of subscribed or paid-in capital, in cash or otherwise, which it must have at any time. In any investigation or proceeding to determine the value of the property, assets, or capital stock of a corporation having shares without nominal or par value under the provisions of this act, neither the stated capital of such corporation [fol. 15] nor the number of shares of its outstanding stock without nominal or par value shall be controlling, but the same may be disregarded or considered only to such extent as shall be necessary or proper for the purpose of such investigation or proceeding." (Emphasis ours.)

IX. Complainant states that the Supreme Court of Missouri in said case of State v. Pierce Petroleum Corporation, on the 4th day of February, 1928, construed that portion of said act set forth in the first sentence of section 12 thereof to be in effect a supplement and an amendment to the said Corporation Annual Franchise Tax Law; to divide corporations into two classes, namely: (1) those having a capital stock with shares of a stated par value, and (2) those whose shares are without nominal or par value; and to prescribe a new basis or method of procedure for the ascertainment of the amount of franchise taxes in the cases of both domestic and foreign corporations doing business in Missouri and having outstanding stock without nominal or par value, by requiring that in computing the amount of such franchise taxes to be paid by foreign, as well as domestic, corporations, the State Tax Commission should consider every such share without nominal or par value to be the equivalent of a share having a par value of $100.00, and that its outstanding or paid-in capital or stated capital, with respect to its outstanding nonpar value shares, should be deemed to be an amount equal to the number of such shares multiplied by $100.00 per share.

Complainant respectfully avers:

First. That such construction of said section 12 renders said Stock Corporation Act, and particularly said section 12, as so construed, as an amendment or supplement to said Corporation Annual Franchise Tax Law, violative of Section 23 of Article IV of the Constitution of the State of Missouri, in that the title to said act is misleading, the subject of said act is not clearly expressed in its title and the act contains more than one subject.

As so construed, this act contains the following subjects: (1) The formation, reorganization, merger or con- [fol. 16] solidation of corporations having stock without nominal or par value (for the first time in Missouri), with provisions prescribing regulations of such corporations for the issuance of both preferred and common shares without nominal or par value, the method of determining the number of shares, the payment therefor, the capital, dividends and reports. This subject is clearly expressed in the title: (2) a supplement and amendment to the Corporation Annual Franchise Tax Law of Missouri by prescribing a new method of procedure for the ascertainment of the amount of such taxes to be paid both by domestic and foreign corporations that have stock without nominal or par value—a revolutionary and burdensome amendment, clearly a subject vitally important, different, incongr-ous and wholly unrelated to the preceding subject and hidden away and disguised in section 12. As to this subject there is a sphinx like silence in the title; (3) foreign corporations doing business in Missouri and having stock without nominal or par value. As to them the Corporation Annual Franchise Tax Act, under which continuously since the enactment of said law their franchise taxes have been computed and paid, is supplemented, and a new, revolutionary and burdensome amendment to said Franchise Tax Law is enacted, prescribing a new method for the computation of their franchise taxes, and that, too, without a line, a word or a syllable in the title to suggest that the act has any relation to foreign corporations or franchise taxes. On the contrary, complainant avers that said title is couched in language that restricts its application to domestic corporations therein dealt with, for it

"authorizes corporations * * * to make provision upon formation, reorganization, merger or consolidation for the issue of either or both preferred or common shares without nominal or par value," authority which could be granted by the State of Missouri only to Missouri corporations.

Complainant avers that even if the title to this act were general and related in general terms to domestic stock corporations having stock without nominal or par value, the aforesaid subjects are so separate, distinct and in- [fol. 17] congruous that they could not, under the aforesaid Section 28 of Article IV of the Constitution of the State of Missouri, be joined in the same act. But complainant avers that the title to said act is not general, but "descends to particulars": that these particulars, therefore, stand alone and become the subject of the act. The question is, therefore, not whether the aforesaid supplements to the Franchise Tax Law with respect to domestic corporations and also with respect to foreign corporations fairly relate to a general subject which might have been stated in the title, but the question is whether such subjects fairly relate to and have a natural connection with the subject which is stated in the title, namely, the particulars set forth in the title—which are the subject.

Complainant submits that these subjects, (2) and (3) above, are manifestly dissimilar to the particulars expressed in the title and are not contributory to the accomplishment of the purposes expressed therein, and that the particulars expressed in the title are affirmatively misleading as to any intent to include (2) and (3) above. That in the title (particulars set forth therein) to the Stock Corporation Act under consideration there is no suggestion that said act intends in any respect to supplement and amend the Corporation Annual Franchise Tax Act, or to provide a method for ascertaining franchise taxes as to either domestic or foreign corporations, or to have any relation whatever to franchise taxes.

For the reasons aforesaid, complainant earnestly avers that the aforesaid construction of said section 12 renders said act, particualrly said section 12 as so construed, violative of Setcion 28 of Article IV of the Constitution of

the State of Missouri and void and the said tax bill illegal and void.

Second. The said Stock Corporation Act, with section 12 construed as aforesaid, violates Section 30 of Article 11 of the Constitution of Missouri and section 1 of the Fourteenth Amendment of the Constitution of the United States, in that it deprives complainant and other corpora- [fol. 18] tions similarly situated of their property without due process of law and violates Section 8 of Article 1 of the Constitution of the United States, in that it imposes a burden upon and is a regulation of interstate and foreign commerce.

Construed as aforesaid, franchise taxes are required by said Section 12 of said Stock Corporation Act to be assessed, and complainant's said taxes have been so assessed, upon an arbitrary, exorbitant, confiscatory and purely fictitious valuation and basis, to wit, the valuation of $100.00 per share on issued and outstanding shares of no par common stock, amounting as to complainant to $376,000,000.00, whereas, in fact, as hereinbefore stated, complainant has received for its no-par common shares, or its paid-in capital stock, or capital applicable, under the aforesaid laws of Delaware, to its common shares, only $36,082,631.09. Its total assets in Missouri and elsewhere amount to only $97,169,076.24, and its total assets in Missouri are but $52,956,249.12. Complainant avers that such assessment is not a franchise tax that is based on anything having relation to the purpose for which it is made, and it has no reasonable relation to the value of the privilege for which it is imposed, or to what was paid complainant for said common stock or to its value, or to the actual amount of complainant's capital stock, its property or its business, intrastate or interstate, and that it is not measured by reference to property wholly within the confines of the state. That said tax is in truth and in fact a tax on property neither located nor used in the State of Missouri but is a tax on rights, privileges and property beyond the jurisdiction of the state; that said tax is grossly arbitrary and confiscatory, and, for the reasons and in the particulars aforesaid, deprives complainant of its property without due process of law, in violation of Section 30 of Article 11 of the Constitution of Missouri and of Section 1 of the

Fourteenth Amendment of the Constitution of the United States, and is a burden upon and a regulation of interstate and foreign commerce, in violation of Section 8 of Article 1 of the Constitution of the United States.

[fol. 19] Third. Complainant further avers that all of the rights and privileges and all of the legal incidents which it possesses in connection with its nonpar stock, including the rights of issuance of such stock, liability of its stockholders thereupon, and the practical uses of such stock, it receives, not from the State of Missouri, but from Delaware, the state of its corporation. That complainant received from the State of Missouri and exercises no other or greater or different privileges in Missouri than does a foreign corporation having the same amount of "outstanding" (paid in) capital stock, the same amount of property in Missouri and elsewhere, but a fewer number of issued and outstanding shares with par value. That the franchise taxes with respect to complainant and such foreign corporation can be and are only a charge for identical privileges, namely, the right in corporate form to use in Missouri the identical amount of paid-in capital stock and property in the prosecution of their business; that in neither case does or could the corporation receive from the State of Missouri any rights or privileges with respect to its shares of stock; yet, under the aforesaid construction of section 12, complainant is discriminated against and as a no-par company is taxed for its franchise privileges a sum grossly disproportionate to and greater than the sum that the foreign corporation with par-value shares is taxed for identical privileges, only because complainant possesses certain rights and legal incidents with respect to its nonpar shares which it derives, not from Missouri, but from the state of its incorporation.

That for the reasons and in the particulars aforesaid said Stock Corporation Act by requiring in section 12 thereof, construed as aforesaid, the imposition of such discriminatory franchise taxes, provides an arbitrary classification and discrimination between corporations similarly circumstanced, thereby denying to them the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; im-

posing taxes that are not uniform upon the same class of subjects, in violation of Section 3 of Article X of the [fol. 20] Constitution of Missouri; fails to tax property in proportion to its valuation, in violation of Section 4 of Article X of the Constitution of Missouri; imposes a confiscatory tax upon property and privileges neither located in nor derived from the State of Missouri, thereby depriving complainant and others similarly circumstanced of their property without due process of law, in violation of Section 30 of Article II of the Constitution of Missouri and Section 1 of the Fourteenth Amendment of the Constitution of the United States; and lays a confiscatory and burdensome tax on interstate and foreign commerce, in violation of Section 8 of Article 1 of the Constitution of the United States.

Fourth. Complainant further avers that it received from the State of Missouri and exercises no other or greater or different franchise privileges than does a foreign corporation with non-par-value shares having the same amount of paid-in capital stock and surplus as complainant, the same amount of property in Missouri and elsewhere, but a fewer number of issued and outstanding shares; both have the same amount of capital stock and surplus employed in business in Missouri, and the franchise taxes imposed by the State of Missouri with respect to both such foreign corporations can be and are only a charge for identical privileges, namely, the right in corporate form to use in Missouri the identical amount of paid-in capital stock and property in the prosecution of their business; in neither case does or could either corporation receive from the State of Missouri any rights or privileges with respect to its nonpar shares of stock, and yet, under the aforesaid construction of section 12 complainant is discriminated against by being taxed, in the guise of a franchise tax, a sum grossly disproportionate to and more than is the other foreign nonpar stock corporation with the less number of shares. In consequence whereof the said Stock Corporation Act, by requiring in section 12 thereof, construed as aforesaid, the imposition of such discriminatory so-called [fol. 21] franchise taxes, provides an arbitrary classification and discrimination between complainant and other for-

eign corporations with non-par stock similarly circumstanced, thereby denying to complainant the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; imposing taxes that are not uniform upon the same class of subjects, in violation of Section 3 of Article X of the Constitution of Missouri; failing to tax property in proportion to its value, in violation of Section 4 of Article X of the Constitution of Missouri; imposing a confiscatory tax upon property not located in the State of Missouri, thereby depriving complainant and others similarly circumstanced of their property without due process of law, in violation of Section 30 of Article II of the Constitution of Missouri and of Section 1 of the Fourteenth Amendment of the Constitution of the United States; and laying a confiscatory and burdensome tax on interstate and foreign commerce, in violation of Section 8 of Article 1 of the Constitution of the United States.

Fifth. That said Stock Corporation Act, with Section 12 construed as aforesaid, provides a different basis for fixing franchise taxes as between corporations organized under the laws of Missouri, having no-par stock and doing business wholly within the state, and corporations organized under the laws of Missouri, having no-par stock and doing business partly within and partly without said state, thereby denying said corporations the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and imposing upon the same class of subjects taxes that are not uniform, in violation of Section 3 of Article X of the Constitution of Missouri, and imposes a tax upon property not in proportion to its value, in violation of Section 4, Article X of the Constitution of Missouri.

Sixth. That said Stock Corporation Act, with section 12 construed by the Supreme Court of Missouri as aforesaid, provides a different basis for fixing franchise taxes as between corporations organized under the laws of Missouri having par value stock and foreign corporations having [fol. 22] no-par stock, and discriminates against such foreign corporations having no-par stock in favor of domestic corporations having par value stock, thereby denying such

foreign corporations the equal protection of the laws, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, imposes taxes that are not uniform upon the same class of subjects, in violation of Section 3 of Article X of the Constitution of Missouri, and imposes taxes upon property not in proportion to its value, in violation of Section 4 of Article X of the Constitution of the State of Missouri.

Complainant states that by reason of the foregoing considerations Section 12 of said Stock Corporation Act, as construed as aforesaid by the Supreme Court of Missouri, in so far as it relates to the assessment of corporation franchise taxes, is invalid, unconstitutional and void; and complainant avers that the aforesaid tax bill and the franchise taxes represented thereby and the action of said Tax Commission in computing said taxes and of said Auditor in making out said tax bill are illegal, unconstitutional and void in the particulars and for the reasons aforesaid, to-wit: They

(a) Deprive complainant of its property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and of Section 30 of Article II of the Constitution of Missouri;

(b) Burden interstate and foreign commerce in violation of Section 8 of Article 1 of the Constitution of the United States.

(c) Violate Section 3 of Article X of the Constitution of Missouri in that said taxes are not uniform.

(d) Violate Section 4 of Article X of the Constitution of Missouri in that complainant's property is not taxed in proportion to its value;

(e) Deny to complainant the equal protection of the laws in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; and

(f) Said taxes have been assessed under said Corpora- [fol. 23] tion Annual Franchise Tax Law with said Section 12 of said Stock Corporation Act, construed as an amendment or supplement thereto as aforesaid, and said section

as so construed is unconstitutional and void in the particulars and for the reason hereinbefore stated.

X. Complainant avers that under Section 9842 of said Corporation Franchise Tax Law, the taxes and penalties to be paid thereunder are made a first lien on all property and assets of the corporation and that under section 9843 of said law it is made the duty of the defendant State Treasurer to certify to the defendant Attorney-General a list of the corporations which have not paid their franchise taxes on or before the first day of June, and of the defendant Attorney-General to proceed forthwith to sue for and collect the same, together with a penalty of 25 per cent and interest at the rate of 1 per cent per month, and said section makes the judgment rendered in such suit a first lien on all property and assets of the corporation within the State of Missouri; that the aforesaid franchise tax bill for $104,220.00, so unlawfully issued and now in the hands of defendant State Treasurer, purports to be a first lien upon all of the assets and property of complainant in the State of Missouri, and casts a cloud upon the complainant's title to said property, and said State Treasurer has certified to the defendant Attorney-General the name of complainant as being delinquent in the payment of said tax bill and said defendant Attorney-General has demanded of complainant payment of said bill and now threatens to and unless restrained by this Honorable Court will institute suit against the complainant for the collection of such taxes in the sum of $104,220.00, together with a penalty of 25 per cent thereof and interest thereupon at the rate of 1 per cent per month. Complainant avers that its said franchise taxes properly computed under said Corporation Franchise Tax Law should be and are $26,478.12, this amount being one-twentieth of 1 per cent of the amount of complainant's entire capital stock or stated capital and surplus employed by it in business in the State of Missouri and that it has offered to pay said sum to defendant State Treasurer and [fol. 24] Attorney-General in full payment and settlement of its franchise taxes for the year ending the 31st of December, 1928, but that said defendants have refused said offer and complainant avers that unless the said tax bill and the taxes represented thereby and the aforesaid ac-

tion of said State Tax Commission and of said State Auditor are annulled and declared to be unconstitutional and void by this Honorable Court, the same will become binding and conslusive upon complainant and complainant will be compelled to pay said tax so levied, assessed and imposed, together with the aforesaid interest and penalty, notwithstanding that the same is illegal, unlawful and unconstitutional.

XI. Complainant alleges that the State of Missouri cannot be sued and that when moneys are paid to the State Treasurer or to the Attorney-General of the State of Missouri for taxes or franchise taxes there is no remedy provided for the recovery of any such sums, even though they have been illegally collected, and that if complainant should pay said taxes to the defendants, or either of them, it could not recover the same or any part thereof, even though it should make such payment under protest. Complainant avers that it is still ready, willing and able to pay forthwith to the State of Missouri the sum of $26,478.12 in full payment and settlement of its franchise taxes for the year ending the 31st of December, 1928, and that it now again offers said sum to the defendants in full payment of said taxes.

XII. Forasmuch therefore as your complainant is without remedy in the premises except in a court of equity and to the end that it may obtain from this Honorable Court the relief to which it is by equity and in right entitled, it respectfully prays that the above defendants, and each of them, be directed full, true and perfect answer to make to this bill of complaint, but not under oath, answer under oath of each of them being hereby expressly waived, and that Section 12 of said Stock Corporation Act as construed as aforesaid by the Supreme Court of Missouri in so far as it relates to the assessment of corporation franchise taxes be adjudged and decreed invalid, unconstitutional and [fol. 25] void, and that the aforesaid tax bill and the aforesaid franchise taxes represented thereby and the aforesaid action of said State Tax Commission in computing and determining said taxes and of said State Auditor in making out said tax bill be adjudged and decreed to be illegal, unconstitutional and void; that the claimed tax lien against complainant's property be canceled and the cloud on its

property be removed and that said defendants, and each of them, their agents, servants, employes and subordinates and each and every of them be enjoined and restrained from in any manner enforcing or attempting to enforce or causing to be enforced the aforesaid tax bill against complainant and from instituting suit against complainant for the recovery of the aforesaid franchise taxes for the year ending December 31, 1928, interest and penalty, assessed and levied as aforesaid against complainant. And that complainant may have such other and further relief as to the Court may seem equitable in the premises.

Complainant further prays that it be granted a restraining order and interlocutory injunction pending the final hearing and decision of this cause, whereby the said defendants, their agents and servants, subordinates and employes and each and every of them be enjoined and restrained as hereinbefore prayed and that upon final hearing the said interlocutory injunction shall be made perpetual.

Wherefore, complainant prays that writ of subpœna issue herein directed to the above-named defendants and each of them, commanding them on a day certain to appear and answer this bill of complaint.

International Shoe Company, by F. C. Rand, President. Thompson & Thompson, by Guy A. Thompson, James D. Williamson, R. E. Blake, Solicitors for Complainant.

Duly sworn to by F. C. Rand. Jurat omitted in printing.

[fol. 26] [File endorsement omitted.]

[fol. 27] APPENDIX A TO BILL OF COMPLAINT

Corporation Annual Franchise Tax Law

(Rev. St. Mo. 1919, Secs. 9836 to 9848, Incl., as Amended Laws 1921, Ex. Session, pp. 122-126)

Sec. 9836. Annual Franchise Tax.—Every corporation organized under the laws of this state, shall, in addition to

all other fees and taxes now required or paid, pay an annual franchise tax to the State of Missouri equal to one-twentieth of one per cent. of the par value of its outstanding capital stock and surplus, or if such corporation employs a part of its capital stock in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one per cent. of its outstanding capital stock and surplus employed in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire outstanding capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located. *Every corporation not organized under the laws of this state, and engaged in business in this state, shall pay an annual franchise tax to the State of Missouri equal to one-twentieth of one per cent. of the par value of its capital stock and surplus employed in business in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located:* Provided, that this law shall not apply to corporations not organized for profit, nor [fol. 28] to express companies, which now pay an annual tax on their gross receipts in this state, and insurance companies, which pay an annual tax on their gross premium receipts in this state: Provided, bank deposits shall be considered as funds of the individual depositor, left for safekeeping and shall not be considered in computing the amount of tax collectible under the provisions of this act. If this provision, exempting bank deposits shall be declared unconstitutional by the courts, then the Legislature hereby declares that it is the intention that the remainder of this act shall be in full force and effect and further declaring that it would have passed this act, irrespective of the said exempting provision. (Laws 1921, Ex. Session, p. 122). (Emphasis ours.)

Sec. 9837. Corporations to Make Report, to Whom—When—To Contain What.—Every corporation liable to the tax prescribed in the foregoing section shall make a report in writing to the Missouri Tax Commission, if it is in existence, and if not, then to the State Board of Equaliza-

tion annually on or before the first day of March, in such form as said Commission or said Board of Equalization may prescribe. Such report shall be signed and sworn to before an officer duly authorized to administer oaths, by the president, vice-president, secretary, treasurer or general manager of the corporation and shall contain the following:

1. Name of corporation.

2. The location of its principal business office.

3. The names of its president, vice-president, secretary, treasurer, and members of the board of directors, with the residence and post office address of each.

[fol. 29] 4. The amount of authorized capital stock.

5. The amount of capital stock subscribed.

6. The amount of capital stock issued and outstanding.

7. The amount of capital stock paid up.

8. The par value of the stock.

9. The clear market value of the stock.

10. The amount of surplus and undivided profits on the 31st day of the preceding December, or on the last day of the preceding fiscal year of said corporation.

11. The nature and kind of business in which the corporation is engaged and the location of its place or places of business.

12. The clear market value of its property and assets in this state.

13. The clear market value of its property and assets without this state.

14. The clear market value of its total property and assets.

15. The amount of liabilities.

16. The change or changes, if any, in the above particulars made since the last annual report (Laws 1921, Ex. Session, page 123).

Sec. 9838. State Tax Commission to Determine Amount —State Auditor to Make Tax Bills, When—Taxes, When Due, etc.—The State Tax Commission, or the State Board of Equalization, as the case may be, shall, on or before the 20th day of March in each year, determine from the facts reported, and from any facts within or coming to its knowledge the proportion of the capital stock and surplus of each corporation employed in business in this state and the amount of tax each corporation is liable to pay under the provision of this article and shall report the same to the State Auditor, who shall make out a tax bill therefor [fol. 30] against each corporation and shall deliver the same to the State Treasurer and charge him therewith. The taxes provided for in this article shall be paid on or before the 15th day of May in each year and shall be due and payable to the State Treasurer without notice, who shall make out and deliver a receipt therefor, which shall recite that the corporation named therein has paid its annual franchise tax under the provisions of this article for the year ending 31st day of the following December (Laws 1921, Ex. Session, page 123).

Sec. 9839. Written Reports, Who Shall Make, etc.—Every corporation organized under the laws of this state and every foreign corporation engaged in business in this state and having no capital stock shall make a report in writing to the Missouri Tax Commission, or if it is not in existence, to the State Board of Equalization, annually, on or before the 1st day of March, in such form as said Commission or said Board of Equalization may prescribe. The report shall be signed and sworn to before an officer authorized to administer oaths by the president, vice-president, secretary, treasurer, or other chief officer of the corporation, and forwarded to said Commission or said State Board of Equalization as the case may be: Provided, that all state, district, county, town and farmers' mutual companies now organized or that may be hereafter organized under any of the laws of this state, organized for the sole purpose of writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the purpose of paying any loss incurred by any member by assessment, shall not be required to make [fol. 31] reports and shall be exempt from all the provisions

of this section and article and shall not be required to pay any fees as in this article provided (Laws 1921, Ex. Session, page 124).

Sec. 9840. Information Reports Shall Contain.—Such report so made shall contain the following:

1. The name of the corporation.

2. The location of its principal office.

3. The names of the president, vice-president, secretary, treasurer and members of the board of directors, with the post-office address of each.

4. The date of annual election of officers.

5. The nature of the business in which said corporation is engaged (Laws 1921, Ex. Session, page 124).

Sec. 9841. State Tax Commission—Duties—Annual Fees.—Upon the filing of the report provided for in Sections 9839 and 9840 of this article, said Commission or said State Board of Equalization, as the case may be, shall report to the State Auditor on or before the 20th day of March of every year, who shall charge and certify to the State Treasurer on or before August 1st of every year for collection as herein provided, a fee of twenty-five dollars for every corporation organized as a mutual insurance corporation not having a capital stock, or any other corporation not organized strictly for religious, charitable or educational purposes and having no capital stock or of a company or association organized to transact business of life or accident insurance on the assessment plan for the purpose of mutual protection and benefit to its members and the payment of stipulated sums of money to the family, heirs, executors, administrators or assigns of the deceased mem-[fol. 32] ber thereof. All foreign life, fire, accident, surety, liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature coming within the provisions of section 9839 and 9840 and doing business in this state having an outstanding capital stock of less than five hundred thousand dollars ($500,000) shall pay an annual fee of fifty dollars ($50.00) and all other such insurance companies having a capital stock of more than five hundred thousand dollars ($500,000) an annual fee of one

hundred dollars ($100.00) for the privilege of doing business in this state, and all building and loan associations to pay an annual fee to the state of twenty-five dollars ($25.00) for the privilege of doing business in this state in place of the fee based on the capital stock and surplus as hereinbefore provided (Laws 1921, Ex. Session, p. 125).

Sec. 9842. Taxes, to Be a Lien.—The taxes and penalties to be paid by the provisions of this article shall be a first lien on all property and assets of the corporation within this state (Laws 1917, p. 237).

Sec. 9843. Delinquents—How Collected—Penalty.—If any corporation fails or refuses to pay the taxes assessed against it under the provisions of this article on or before the first day of June the State Treasurer shall certify a list of such corporations so delinquent to the Attorney-General, who shall proceed forthwith to collect the same, together with a penalty of twenty-five per cent. and interest at the rate of one per cent. per month. Suits for the collection of such taxes may be brought in the name of the state in any court of competent jurisdiction and any judgment rendered therein in favor of the state shall be a first lien on all property and assets of the corporation within this state (Laws 1921, Ex. Session, p. 125).

[fol. 33] Sec. 9844. Failure to Make Report, Prosecuting Attorney to Bring Action, etc.—If any corporation subject to the provisions of this article shall fail or neglect to make the report herein required, or within the time herein required, such corporation, if organized under the laws of this state, shall forfeit its charter, or, if a foreign corporation, shall forfeit its right to engage in business in this state, and the Attorney General, or at his direction, the Prosecuting Attorney of the county in which such corporation has its principal business office, shall bring an action in the name of the state in some court of competent jurisdiction to annul the charter or revoke the license of such corporation to engage in business in this state (Laws 1917, p. 237).

Sec. 9845. Value of Property—Not to Be Set Out in Report—When.—All insurance companies, building and loan associations, and other corporations, the fees of which are

fixed at lump sums by this article, and all corporations which employ all their property and all their outstanding capital stock in this state, or which will report and pay the fees on all of its outstanding capital stock, whether employed in this state or not, shall not be required to set out in the report required by this article the value of its property within this state or without the state (Laws 1921, Ex. Session, p. 126).

Sec. 9846. Board May Summon Witnesses, Take Testimony, etc., When.—If any corporation subject to the provisions of this article fails or refuses to make full and complete answers to the questions contained in the report required to be filed by it, or if the Tax Commissioner or State Board of Equalization, as the case may be, finds that any answer or answers contained in said report are untrue, or [fol. 34] if said Tax Commission or State Board of Equalization, as the case may be, has reason to believe and does believe that any corporation has made a false statement or concealed any fact or facts which are material in determining the amount of tax for which such corporation is liable or ought to be liable under the provisions of this article, then said Commissioners may require the delinquent corporation, its officers, agents or employes to furnish information concerning their capital stock which is necessary in determining the amount of tax to be paid by them, and for that purpose said Commission or said State Board of Equalization, as the case may be, may summon witnesses to appear and give testimony and to produce records, books, papers, documents, and all other information of any kind or character required relating to any matter necessary to be ascertained for the purpose of arriving at the amount of such tax to be paid. The witnesses may be summoned by subpœna issued by any member of such Commission or the secretary thereof, in the name of the Commission, if such Commission be in existence, in the name of such board, directed to the sheriff of any county in the state and returnable to said Commission or said State Board of Equalization, as the case may be, which subpœna shall be served in like manner and the same effect and under similar conditions as if issued out of the Circuit Court. Such Commission or the State Board of Equalization, as the case may

be, is also authorized to take depositions of witnesses residing within or without the state or absent therefrom, to be taken upon notice to the interested parties, if any, in like manner that depositions of witnesses are taken in civil cases [fol. 35] in the Circuit Court in any matter which the Commission may have authority to investigate and determine. Oaths of witnesses in any matter under investigation or consideration of such Commission or State Board of Equalization, as the case may be, may be administered by the secretary or any member of such Commission or the State Board of Equalization, as the case may be. In case any witness shall fail to obey any subpœna or summons to appear before said Commission or shall refuse to testify or answer any material questions and to produce records, books, papers or documents when required so to do, such failure or refusal shall be reported to the Attorney-General, who shall thereupon proceed in the proper course to compel obedience to any subpœna or summons or proper order of the Commission or State Board of Equalization, as the case may be, and said Commission or Board may punish witnesses for any improper neglect or refusal (Laws 1917, p. 237).

Sec. 9847. Powers of Commission, etc.—Said Commission or said State Board of Equalization, as the case may be, shall have power to appoint a commissioner to take testimony in any proceeding or inquiry arising under the provisions of this article, and such commissioner may take testimony within or without the state and have all the power evidence so taken to the Commission or Board of Equaliza- to compel witnesses to appear and give testimony and to produce records, books, papers, documents or other evidence; such commissioner shall return all testimony and evidence so taken to the Commission or Board of Equalization and shall be allowed a reasonable compensation and expenses, including stenographic fees. Any witness who [fol. 36] shall knowingly or willfully give false answers to any questions propounded in any such sworn examination where the fact inquired of is within his knowledge shall be deemed guilty of perjury. It shall be unlawful for any member of the Missouri Tax Commission or any member of the State Board of Equalization, as the case may be, or for any officer or employee of such Commission or such State Board

of Equalization, as the case may be, or for any other officer or employe of the state to divulge or make known in any manner whatever not provided by law to any person, any information obtained by them in the discharge of their official duties; or to divulge or make known in any manner not provided by law any document reviewed or evidence taken or report made under this article. Any offense against the foregoing provisions shall be a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars ($1,000.00), or by imprisonment in the county jail not exceeding six months (Laws 1917, p. 237).

Sec. 9848. Failure of Commission—State Board of Equalization to Act.—In the event that the State Tax Commission is not created or in existence all the powers and duties of such Commission under the provisions of this article shall devolve upon and be exercised and performed by the State Board of Equalization, and in such event the State Board of Equalization may employ such stenographic and clerical and other assistance as may be necessary to the proper carrying out of the provisions of this law (Laws 1917, p. 237).

[fol. 37] Appendix B to Bill of Complaint

Stock Corporation Act

(Laws Mo. 1921, pp. 661-666)

An act authorizing stock corporations, other than building and loan associations, trust companies and corporations authorized by law to transact the business of banking or insurance, to make provisions, upon formation, reorganization, merger, or consolidation, for the issue of either or both preferred or common shares without nominal or par value; regulating the same and such corporations; and prescribing the method of determining the number of shares and capital of corporations issuing shares in such manner.

Section 1. Stock Corporations Other Than Building and Loan Associations, Trust Companies, etc.—Shares, par Value—Capital.—Upon the formation or reorganization,

under the laws of this state from time to time in force, of any stock corporation, other than building and loan associations, trust companies and corporations authorized by law to transact the business of banking or insurance, or upon the merger or consolidation of two or more such corporations of this state with each other or any one or more of such corporations of this state with one or more such corporations of another state or states or of the United States, provision may be made for the issue of shares of preferred stock of any or all classes, or common stock of any class, or both preferred and common stock, without any nominal or par value, by stating in the articles of association or certificate of incorporation or reorganization or in the joint agreement of merger or consolidation, in lieu [fol. 38] of statements which may be prescribed by law as to the amount of the capital stock and the number and par value of shares into which it is divided:

(a) The number of shares with nominal or par value, and the number of shares without nominal or par value, that may be issued by the corporation, and the classes, if any, into which such shares are divided;

(b) The nominal or par value of shares of stock other than shares which is it stated are to have no nominal or par value;

(c) The amount of capital with which the corporation will begin business.

Sec. 2. Amount of Capital Stock Shall be Fully Paid in.—No corporation authorized to issue shares of stock without nominal or par value in pursuance of the provisions of this act shall begin to carry on business or shall incur any indebtedness, until the amount of the capital with which it will begin business stated in pursuance of section 1 of this act, shall have been fully paid in cash or in property.

Sec. 3. Stated Capital Shall not Include net Profits or Surplus Earnings.—For the purposes of this act the stated capital (as that term is hereinafter used in this act) of a corporation issuing shares without nominal or par value shall be the capital with which the corporation will begin business increased by any net additions thereto, or diminished by any net deductions therefrom: but stated capital

shall not include any net profits or surplus earnings until transferred to capital, and shall not be larger in amount than the excess, as shown by the books of the corporation, of its assets over and above its liabilities, other than liabilities on account of shares of stock issued or to be issued by [fol. 39] such corporation. In the case of a corporation having outstanding shares with a nominal or par value, as well as shares without a nominal or par value, for the purpose of this act the portion of stated capital applicable to the shares without a nominal or par value shall be the excess of stated capital over and above the total par value of outstanding shares having a nominal or par value.

Sec. 4. May be Stated in Dollars or Cents per Share.—Preferences, rights, limitations, privileges, and restrictions may be stated in dollars or cents per share in respect to shares of stock issued in pursuance of the provisions of this act.

Sec. 5. Authorized Shares May be Issued, When.—Such corporation may issue and may dispose of its authorized shares having no nominal or par value, from time to time, for such consideration as may be prescribed or authorized in the articles of association or certificate of incorporation or reorganization or the joint agreement of merger or consolidation, or, if not so prescribed, then for such consideration as may be fixed by the stockholders of such corporation at any annual meeting thereof or at any special meeting thereof duly called and held or by the board of directors acting under authority of such stockholders given in like manner.

Sec. 6. Shares Shall be Deemed Fully Paid and Non-assessable.—Any and all shares without nominal or par value, issued for the consideration as prescribed or fixed in accordance with the provisions of section 5 of this act, shall be deemed fully paid and be non-assessable, and the holder of such shares shall not be liable thereon to the corporation or to its creditors.

[fol. 40] Sec. 7. Certificate Shall Plainly State, What.—Every certificate for shares of stock without any nominal or par value shall have plainly stated upon its face the

number of shares which it represents, and no certificate shall express any par value for such shares or any rate of dividend to which such shares shall be entitled in terms or percentage of any par or other value.

Sec. 8. Dividends to be Paid Out of Net Profits and Surplus Earnings.—No corporation having shares without nominal or par value, issued under the provisions of this act, shall declare or pay any dividend out of capital or out of anything except net profits or surplus earnings. In case any such dividends shall be declared or paid other than from net profits or surplus earnings, the directors voting for such dividend shall be liable, jointly and severally, to such corporation, and to the creditors thereof, to the full amount by which such dividend shall have been paid out of capital.

Sec. 9. Par Value of Shares to be Stated.—In any case in which it is otherwise required by law that the par value of the shares of a corporation be stated, but the shares of such corporation of any class are without nominal or par value, there shall be stated in lieu thereof in respect of such shares that such shares of such class are without par value; and when in any case the maximum or minimum amount of the capital stock of a corporation and its division into shares is required to be stated, but the shares of such corporation or any class are without nominal or par value, there shall be stated in lieu thereof the maximum or minimum amount of the capital stock of the corporation represented by shares having a par value and the division thereof [fol. 41] into shares and the maximum and minimum number of shares without nominal or par value and that such shares are without par value. In any case, in which it is required by law that any action on the part of a corporation may be taken only with the authorization, consent or approval of its stockholders holding a specified amount or a specific fraction in amount of its capital stock, a share without nominal or par value shall be considered the equivalent of a share having a nominal or par value of one hundred dollars.

Sec. 10. Corporation May Increase or Reduce Number of Shares.—Any corporation having shares without any nominal or par value in pursuance of this act, may increase or

reduce the number of shares which it may issue, in the manner now provided by law for the increase or reduction of the capital stock of a similar corporation having shares with a par value.

Sec. 11. Shares of Stock to be Deemed Part of Aggregate Capital of Corporation.—Except as to any preferences, rights, limitations, privileges and restrictions, lawfully granted or imposed with respect to any stock or class thereof, shares of stock without nominal or par value shall be deemed to be an aliquot part of the aggregate capital of the corporation issuing the same and equal to every other share of stock of the same class.

Sec. 12. Taxes to be Paid—How Computed.—*For the purpose of computing any organization taxes required to be paid under the laws of this state, and such tax or taxes, if any, the determination of which is based on the par value of shares of stock and not on the number of shares or the actual or ascertained value thereof and for the purpose of* [fol. 42] *any statutory provision limiting the relation between indebtedness and capital stock, each share of stock without any nominal or par value, under the provisions of this act, shall be considered the equivalent of a share having a nominal or par value of one hundred dollars.* For the purpose of any report, return, or similar instrument wherein the amount or par value of stock or capital or capital stock, paid in, outstanding, or retired, is required to be stated, in the case of shares without nominal or par value, and with respect to such shares, the amount or par value thereof, outstanding or paid in prior to the date of such report, return or similar instrument, shall be considered as the amount of stated capital in excess of the total par value of outstanding shares having a par value, if any, and the amount or par value thereof retired shall be considered as the amount of decrease, if any, of stated capital due to such retirement. In the case of shares without nominal or par value presently to be issued, in lieu of stating the amount or par value thereof in any such certificate, report, return, or similar instrument, a description of the consideration received or to be received therefor, or of the assets received or to be received for which the

proceeds from the disposition of the said shares are to be used to pay or reimburse the treasury of the company, and the net changes, if any, in the corporations' stated capital, due to the receipt of such consideration, shall be stated. In the case of shares without nominal or par value authorized but unissued and not presently to be issued, it shall not be necessary, in such report, return, or similar instrument, to show the amount or par value thereof, and only the num-
[fol. 43] ber thereof need be stated. For the purpose of any statutory provision limiting the amount of capital stock which a corporation may have, or prescribing the portion or amount or par value of stock or capital which must be subscribed or paid in cash or otherwise, whether at the time of formation, before commencing to do business, or from time to time subsequent thereto, the stated capital of a corporation having shares without nominal or par value, shall be deemed to be its capital stock or the amount thereof. Nothing in this act contained shall be construed as excepting or relieving a corporation from any requirement of law as to the amount in dollars of subscribed or paid-in capital, in cash or otherwise, which it must have at any time. In any investigation or proceeding to determine the value of the property, assets, or capital stock of a corporation having shares without nominal or par value under the provisions of this act, neither the stated capital of such corporation nor the number of shares of its outstanding stock without nominal or par value shall be controlling, but the same may be disregarded, or considered only to such extent as shall be necessary or proper for the purpose of such investigation or proceeding. (Emphasis ours.)

Sec. 13. Laws Applicable to Corporation Provided by Act.—Except as otherwise provided by this act, corporations issuing shares without any nominal or par value, under the provisions hereof, shall be and remain subject to the laws of this state, now or hereafter in force, relating to the formation, regulation, reorganization, consolidation, or merger, rights, powers, and privileges of such corporations, and all other laws applicable thereto.

[fol. 44] Sec. 14. Acts or Parts of Acts Inconsistent Repealed.—All acts or parts of acts providing for the incor-

poration, organization, administration and management of the affairs of corporations or otherwise, and inconsistent with this act, are, as respects corporations having shares without nominal or par value, hereby repealed, but all such acts or parts of acts are in all other respects, as respects corporations having shares without nominal or par value, expressly continued in full force and effect.

Sec. 15. Act Does Not Limit Jurisdiction of Public Service Commission.—Nothing in this act shall be construed in any way to limit the jurisdiction of the Public Service Commission under the Public Service Commission Act over the issue by public utilities of shares of stock without nominal or par value pursuant to this act.

Approved April 12, 1921.

[fol. 45] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION THAT DEFENDANTS WILL NOT ENFORCE OR ATTEMPT TO ENFORCE AGAINST COMPLAINANT THE FRANCHISE TAX BILL—Filed July 9, 1928

The defendants in the above entitled cause, Stratton Shartel, Attorney-General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, stipulate and agreee with the complainant in said cause, International Shoe Company, that the said defendants will not take any steps to enforce or attempt to enforce or to cause to be enforced against complainant the franchise tax bill mentioned in the bill of complaint in the aforesaid cause, and will not institute any suit against complainant for the recovery of the said franchise taxes, pending the hearing and determination in the United States District Court upon the application of the said complainant for an interlocutory injunction or pending the hearing on appeal from the order of said Court granting

or denying said preliminary injunction, the giving of any bond by complainant being expressly waived.

Stratton Shartel, Attorney General of the State of Missouri; C. Eugene Stephens, State Treasurer of the State of Missouri, by Stratton Shartel, Their Solicitors, by W. E. Sloat, Spec. Asst. Atty. Genl. International Shoe Company, by Guy A. Thompson, Its Solicitor.

[File endorsement omitted.]

[fol. 46] IN UNITED STATES DISTRICT COURT

[Title omitted]

MINUTE ENTRY OF FILING OF ORDER TO SHOW CAUSE, ETC.—July 16, 1928

Now on this day comes the plaintiff by its solicitors, and files an Order to Show Cause, and Order for issuance of Subpoena; thereupon in pursuance to said order, a subpoena is issued against said defendants commanding them to be and appear before this court, as provided by the Equity rules.

IN UNITED STATES DISTRICT COURT

ORDER TO SHOW CAUSE WHY INTERLOCUTORY INJUNCTION SHOULD NOT BE GRANTED AND ORDER FOR ISSUANCE OF SUBPOENA IN CHANCERY—Filed July 16, 1928—and MARSHAL'S RETURN

Whereas in the above entitled cause it has been made to appear upon the bill of complaint filed herein that an interlocutory injunction, preliminary to a final hearing, is proper and that prima facie the complainant is entitled thereto, enjoining the defendants from in any manner enforcing or attempting to enforce or causing to be enforced against the complainant the tax bill for complainant's Corporation Franchise Taxes for the year ending December 31, 1928, mentioned in said bill of complaint, and from in-

[fol. 47] stituting suit against complainant for the recovery of said franchise taxes, interest and penalty,

Now, it is ordered that the said defendants, Stratton Shartel, Attorney-General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, appear in the District Court of the United States, Central Division, Western Judicial District of the State of Missouri, on the 12th day of October, 1928, at the hour of 9:30 o'clock A. M., at the Federal Building in the city of Jefferson City, Missouri, in the court room of said Court, before the Judges then and there sitting to hear the application for said interlocutory injunction contained in the bill of complaint herein, and then and there show cause, if any they have, to the Judges then sitting to hear and determine said application, why the interlocutory injunction asked for in said bill of complaint should not be granted.

It is further ordered that a Subpœna in Chancery be forthwith issued, directed to the Marshal of the District Court of the United States for the Western Judicial District of Missouri, requiring defendants Stratton Shartel, Attorney General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, to appear and answer the bill of complaint of the complainant herein; and also that the said Marshal be and he is hereby directed forthwith to serve the said defendants and Sam A. Baker, Governor of the State of Missouri, with a copy of this order, certified under the hand of the Clerk and the seal of this Court.

Dated at St. Joseph, Mo., this 12th day of July, 1928.

Merrill E. Otis, Judge of the United States District Court for the Central Division, Western Judicial District of Missouri.

[File endorsement omitted.]

[fol. 48] Return of Marshal on Order to Show Cause

United States of America
Central Division of the
Western District of Missouri, set:

I hereby certify that I executed this writ by leaving a copy of the same at the office of the Attorney General with

his chief Clerk, to-wit: Margaret Zietz, the Attorney General was absent from Cole County at the time of said service. I further executed this writ by leaving a copy of the same at the office of the State Treasurer of the State of Missouri, with the Chief Clerk, to-wit: Paul W. McCall, the Treasurer of the State of Misouri being absent from Colt County at the time of said service. I further executed this writ by leaving a copy of the same at the office of the Governor of the State of Missouri with his Secretary, to-wit, Martha Godsey, the Governor being absent from Cole County at the time of said service.

All done in Cole County in said Division and District this 16 day of July, 1928.

Asa W. Butler, U. S Marshal, by Anton B. Richter, Deputy.

Marshal's fees: 3 services, $6.00.

Returned to the Clerk's office and filed July 20, 1928.

[fol. 49] IN UNITED STATES DISTRICT COURT

SUBPOENA IN CHANCERY, WITH RETURN OF MARSHAL.—Filed July 21, 1928

UNITED STATES OF AMERICA
Central Division of the
Western District of Missouri, set:

The President of the United States of America to Stratton Shartel, Attorney General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, greeting:

You Are Hereby Commanded to be and appear at the office of the Clerk of the District Court of the United States, for the Central Division of the Western District of Missouri, on the 12th day of October, 1928, at Jefferson City, Missouri, then and there to answer the bill of complaint of International Shoe Company, a corporation, citizen of the State of Delaware, filed against you on the 9th day of July, A. D. 1928; hence fail not.

Witness the Honorable Merrill E. Otis, Judge of the United States District Court for the Western District of Missouri, the 16th day of July, 1928.

Issued at office in Jefferson City, Missouri, in said District, under the seal of said Court, the day and year last aforesaid.

Edwin R. Durham, Clerk of said District Court, by F. J. Fromme, Deputy Clerk. (Seal.)

Memorandum.—The defendants are required to file their answer or other defense in the Clerk's office on or before the twentieth day after service, excluding the day thereof; otherwise the bill may be taken pro confesso.

Edwin R. Durham, Clerk, by F. J. Fromme, Deputy Clerk. (Seal.)

United States of America
Central Division of the
Western District of Missouri, set:

I do hereby certify that I executed this writ by leaving a copy of the same at the office of the Attorney General of [fol. 50] the State of Missouri with the Chief Clerk, to-wit: Margaret Zietz, the Attorney General of the State of Missouri was absent from Cole County at the time of said service. I further executed this writ by leaving a copy of the same at the office of the State Treasurer of the State of Missouri, with the Chief Clerk, to-wit: Paul W. McCall, the Treasurer of the State of Missouri was absent from Cole County at the time of said service. All done in Cole County in said Division and District this 16th day of July, 1928.

Asa W. Butler, U. S. Marshal, Western District of Missouri, by Anton B. Richter, Deputy.

In United States District Court

[Title omitted]

Minute Entry of Filing of Answer—Aug. 3, 1928

Now on this day come the defendants by their attorneys, and file their joint answer to the bill of complaint.

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 51] ANSWER—Filed Aug. 3, 1928

Come now the defendants Stratton Shartel, Attorney General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, and for their answer to the bill of complaint filed in the above entitled cause say:

I

Defendants admit that the complainant, International Shoe Company, is a duly organized corporation, organized under the laws of the State of Delaware, and that said corporation is duly licensed and qualified to do business in the State of Missouri; that complainant has maintained its principal business office in the city of St. Louis, Missouri; that defendant Stratton Shartel is the duly qualified and acting Attorney General of the State of Missouri, and as such is charged with the duty of enforcing payment to said state of corporation franchise taxes reported delinquent to him by the State Treasurer; that defendant C. Eugene Stephens is the duly elected, qualified and acting State Treasurer of the State of Missouri, and as such is charged with the duty of collecting the corporation franchise taxes ascertained, levied and assessed under the laws of the State of Missouri, and of certifying to the Attorney General of the State of Missouri the list of corporations delinquent in the payment of the franchise tax; that complainant by reason of its incorporation under the laws of Delaware, is a citizen and resident of the State of Delaware, and that defendants are bona-fide citizens of the State of Missouri, residing in the city of Jefferson City, County of Cole, State of Missouri, Central Division of the Western Judicial District.

II

Defendants further answering admit that this is a civil suit wherein the matter of controversy exceeds the sum of $3,000 exclusive of interest and costs.

[fol. 52]

III

Defendants further answering admit that complainant corporation is incorporated under the laws of the State of Delaware and is authorized to issue an aggregate of 4,250,000 shares of stock, of which 250,000 were to be preferred shares of the value of $100.00 each, amounting in the aggregate to $25,000,000, and that 4,000,000 shares were authorized to be issued without nominal or par value; that there are now outstanding 100,000 shares of preferred stock at the par value of $100.00 per share making an aggregate of outstanding par stock of $10,000,000; that there are now outstanding 3,760,000 shares of the 4,000,000 shares which were authorized to be issued without nominal or par value.

IV

Defendants further answering admit that complainant operates shoe factories in various parts of the United States, and that only approximately 54% of its property and assets is employed within the State of Missouri.

V

Defendants further answering admit that in 1917 the General Assembly of the State of Missouri passed an act known as the Corporation Annual Franchise Tax Act, and that in 1921 the General Assembly of the State of Missouri in extra session passed an act set forth in the laws of Missouri, 1921, extra session, beginning on page 121, repealing certain sections of said Corporation Annual Franchise Tax Act, and enacting new sections in lieu thereof, and that said new sections, with the unrepealed old sections of said act, now constitute the corporation annual franchise tax law of the State of Missouri.

VI

Defendants further answering admit that complainant made its corporation franchise tax report, which is required to be made under the law, in due time, said report having been signed and sworn to by complainant's treasurer. Defendants further admit that said report of complainant cor-

[fol. 53] poration shows total property and assets of the value of $97,169,076.24, of which complainant admits approximately 54% or $52,956,249.12 of said property and assets is located within the State of Missouri.

VII

Defendants further answering admit that the franchise taxes of corporations having stock of no-par value were not figured the same for the year 1928 as they had formerly been figured by the State Tax Commission. Defendants admit that in 1928, the state law of Missouri which governs corporations with no-par stock, which law is found at page 661, Laws of Missouri, 1921, was used in arriving at the franchise tax, said law having been recently construed by the Supreme Court of Missouri in the case of State vs. Pierce Petroleum Corporation, 2 S. W. 2nd Series, 790. Defendants further state, however, that since the above mentioned decision of the Supreme Court of the State of Missouri, all corporations doing business within this state, and having stock of no-par value, have been assessed at the same rate per share on all stock of no-par value for the purposes of assessing the franchise tax.

Defendants further admit that all outstanding stock of complainant corporation with no-par value was assessed for the 1928 franchise tax at $100.00 per share, which assessment made the tax of said complainant corporation due the State of Missouri for 1928 amount to $104,220.00. Defendants further admit complainant corporation has offered to pay to said State Treasurer prior to June 1, 1928, the sum of $26,478.12 in full payment of its franchise tax for 1928; that said amount has been refused by the State Treasurer, and that on June 1, 1928, said defendant, State Treasurer, certified to defendant Attorney General, the name of complainant corporation as delinquent in the payment of said taxes.

VIII

Defendants further answering admit that the State Tax [fol. 54] Commission in computing the franchise taxes against said complainant corporation for the year 1928 departed from the former practice of assessing no-par

stock, but defendants deny that the method employed is erroneous and unconstitutional.

Defendants admit that in the year 1921 the General Assembly of the State of Missouri passed an act governing corporations with no-par stock, and admit that the title to this act is the same as that set out at page 15 of complainant's bill, and that Section 12 of said act, under which the capital of the corporation is ascertained, is the same as set out at page 15 of complainant's bill.

IX

Defendants further answering admit that parts of this law were construed by the Supreme Court of Missouri in the case of State v. Pierce Petroleum Corporation, said Pierce Petroleum Corporation having been a foreign corporation incorporated in the same state as is complainant corporation.

(1) Defendants, however, deny that the title to said act is unconstitutional, for the reason that this act is used only to arrive at the capital of a corporation, the tax then being assessed under the State Franchise Act. Defendants further state that the title to this act specifically provides a method of "determining the number of shares and capital of corporations issuing shares in such a manner." Defendants aver that this is the only use made of this act, and that the franchise tax is not assessed under this act, but that it is used merely to arrive at the capital stock of a corporation.

(2) Defendants deny that said law imposes a burden upon or is a regulation of interstate and foreign commerce, it being assessed only against the proportionate shares of a corporation's outstanding capital stock which is employed within the State of Missouri, and aver that it is not a tax on rights, privileges and property beyond the jurisdiction of the State of Missouri, nor is it arbitrary and confiscatory.

[fol. 55] (3) Defendants deny that this tax is an arbitrary classification and discrimination between corporations similarly circumstanced, and aver that all corporations, foreign and domestic, are treated alike under this statute.

(4) Defendants deny that Section 12 of said stock corporation act as construed by the Supreme Court of the State of Missouri, provides an arbitrary classification and discrimination between complainant and other foreign corporations with no-par stock similarly circumstanced, thereby denying the complainant the equal protection of the law.

(5) Defendants deny that the construction of Section 12 of the stock corporation act provides a different basis for fixing franchise taxes as between corporations organized under the laws of Missouri, having no-par stock and doing business only within the state, and of corporations organized under the laws of Missouri having no-par stock and doing business partly within, and partly without said state.

(6) Defendants deny that any difference is made in assessing the state franchise tax of domestic corporations and of foreign corporations having stock of no-par value.

X

Defendants admit that the taxes and penalties accruing under the franchise tax act becomes a first lien on all property and assets of a corporation.

XI

Defendants admit that taxes once paid to the State of Missouri cannot be remitted except by a special act of the state legislature.

XII

Defendants further answering aver that the state franchise tax law and the stock corporation act of Missouri, are both constitutional and have been so declared by the [fol. 56] Supreme Court of the State of Missouri, and that the tax against complainant corporation has been fairly assessed and is now due and owing to the State of Missouri.

Wherefore defendants, having fully answered, pray that the relief asked for in complainant's bill of complaint be

denied, and for such other and further relief as the defendants may in equity and good conscience be deemed by the court entitled to.

Stratton Shartel, Attorney General; W. E. Sloat, Special Assistant Attorney Gen'l, Solicitors for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MINUTE ENTRIES OF ORDER TRANSFERRING CAUSE, ETC.

[Titles omitted]

October 18, 1928.

It is ordered by the Court that this case be and the same is hereby transferred to the Western Division of the Western District of Missouri, for trial only, before three judges.

Oct. 23, 1928.

The parties hereto appearing by their respective counsel, a hearing is proceeded with, before Hon. Kimbrough Stone, Circuit Judge, Hon. Albert L. Reeves and Hon. Merrill E. Otis, District Judges, and counsel having completed their arguments, the application for a temporary injunction is denied.

[fol. 57]

Nov. 2, 1928.

Now on this day is filed the Opinion of Court and an Order denying application for temporary injunction.

[fol. 58] IN UNITED STATES DISTRICT COURT

In Equity. No. 223

INTERNATIONAL SHOE COMPANY, a Corporation, Complainant,

vs.

STRATTON SHARTEL, Attorney-general of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, Defendants

Before Stone, Circuit Judge, and Reeves and Otis, District Judges

REEVES, District Judge, delivered the opinion of the Court.

OPINION—Filed Nov. 2, 1928

Complainant, a corporation of Delaware but doing business under a license in the State of Missouri, seeks by this proceeding to restrain proper officials of the State of Missouri from levying and collecting certain franchise taxes. Such taxes are imposed by operation of law. Complainant questions the constitutionality of the Corporation Annual Franchise Tax Law of said state. This challenge is made because of the decision of the Supreme Court of Missouri in State v. Petroleum Corporation, 2 S. W. 2d Series 790. It was held in that case that Section 12 of the Stock Corporation Act amended the Franchise Tax Law.

The Annual Franchise Tax Law of Missouri, so far as pertinent here, provides, among other things, that

[fol. 59] "Every corporation not organized under the laws of the State, and engaged in business in this state, shall pay an annual franchise tax to the State of Missouri equal to one-twentieth of one per cent. of the par value of its capital stock and surplus employed in business in this state, and for the purposes of this article such corporation shall be deemed to have employed in this state that proportion of its entire capital stock and surplus that its property and assets in this state bears to all its property and assets wherever located."

Domestic corporations were subject to the same rule. Subsequently there was enacted the Stock Corporation Law. This provided, among other things, for the issuance of shares of stock without nominal or par value. Previously no such provision had been made under the Missouri law. Section 12 of said Act reads as follows:

"For the purpose of computing any organization taxes required to be paid under the laws of this state, and such tax or taxes, if any, determination of which is based on the par value of shares of stock and not on the number of shares or the actual or ascertained value thereof and for the purpose of any statutory provision limiting the relation between indebtedness and capital stock, each share of stock without any nominal or par value, under the provisions of this act, shall be considered the equivalent of a share having a nominal or par value of one hundred dollars."

By the decision in the Pierce Petroleum case, supra, the above provision was made applicable in computing the franchise tax on all corporations, both domestic and foreign.

The complainant has gross assets in the aggregate of $97,169,076.24. Its assets located in the State of Missouri are of the market value of $52,956,249.12. Aside from its preferred stock issued and outstanding with a stipulated par value, it has issued and outstanding 3,760,000 shares of stock without nominal or par value.

[fol. 60] As stated, the Supreme Court of Missouri, in Pierce Petroleum, supra, held in substance that the mode of computing values under the Franchise Tax Law should be that prescribed by said Section 12. The taxing authorities accordingly applied the valuation thus fixed by statute to complainant's stock and made the computation prescribed by said Section 12. This gave complainant's issued shares, without nominal or par value, a valuation of $376,000,000. The formula so employed raised complainant's franchise tax from approximately $25,000 under former computations to a sum in excess of $100,000.

Complainant asserts variously that it is deprived of its property without due process of law; that its interstate commerce is unduly burdened; that there is an absence of uniformity; that there is no lawful proportion as to value

and that it has been denied the equal protection of the law.

1. All of the above questions, save as to the effect on interstate commerce, were settled in Roberts & Schaefer Co. v. Emmerson, 271 U. S. 50, and numerous other decisions.

2. The remaining question is to determine whether the tax places such a burden upon interstate commerce as to warrant interference by this court. As postulates to the consideration of this question, the following principles may be assumed:

"The state may tax the corporation's property regularly or permanently located within its limits, where the ascertainment of the amount assessed is made 'dependent in fact on the value of its property situated within the state.'" (Western Union Telegraph Co. v. Kansas, 216 U. S. 1, l. c. 26 and 27; Postal Telegraph Co. v. Adams, 155 U. S. 688, l. c. 696; Leloup v. Mobile, 127 U. S. 640, l. c. 649.)

[fol. 61] The federal court "must respect in the fullest degree the sensitiveness of Congress in hedging about the sovereign power of taxation by the States and precluding temporary federal judicial interference with it save in clear cases." (Chicago G. W. Ry. Co. v. Kendall, 266 U. S. 94, l. c. 101.)

"One challenging the validity of a state enactment on the ground that it is repugnant to the commerce clause is not necessarily bound by the legislative declarations of purpose. It is open to him to show that in their practical operation its provisions directly burden or destroy interstate commerce." (Foster-Fountain Packing Co., Inc. et al. vs. Haydel et al., No. 68—Opinion by Mr. Justice Butler, delivered October 15th, 1928.)

Applying the foregoing principles in the consideration of the case at bar, it is obvious that this tax is not upon property but the amount of the tax is measured by property located within the State of Missouri; that the state authorities were careful to compute the tax upon such property and that there was no effort to impose a tax measured upon property not situated within the state, nor was such its effect. The method of computation was fixed by statute and the taxing authorities were bound thereby.

In the case of the Hump Hairpin Co. v. Emmerson, 258 U. S. 290, the Supreme Court had practically the same question as here presented. A West Virginia corporation had its place of business in the State of Illinois. It transacted practically all of its business there. It was engaged, however, in interstate commerce. The statute of Illinois, which was challenged, was very similar to the statute questioned in this case. A tax was computed upon the capital stock of the foreign corporation "represented by property located and business transacted" in the State of Illinois. Mr. Justice Clarke, who wrote the opinion for the court, said that—

[fol. 62] "While a State may not use its taxing power to regulate or burden interstate commerce * * * on the other hand it is settled that a state excise tax which affects such commerce, not directly, but only incidentally and remotely, may be entirely valid where it is clear that it is not imposed with the covert purpose or with the effect of defeating federal constitutional rights. As coming within this latter description, taxes have been so repeatedly sustained where the proceeds of interstate commerce have been used as one of the elements in the process of determining the amount of a fund (not wholly derived from such commerce) to be assessed, that the principle of the cases so holding must be regarded as a settled exception to the general rule. * * * The turning point of these decisions is, whether in its incidence the tax affects interstate commerce so directly and immediately as to amount to a genuine and substantial regulation of, or restraint upon it, or whether it affects it only incidentally or remotely so that the tax is not in reality a burden, although in form it may touch and in fact distantly affect it."

The proposition is restated that—

"No formula has yet been devised by which it can be determined in all cases whether or not such a tax is valid."

Then referring to the Illinois statute, the court continued:

"Clearly the statute is not a disguised attempt to tax interstate commerce. On the contrary, its purpose plainly is to differentiate state from interstate business and to im-

pose the tax only on the former. Construed with other statutes the act accords equal treatment to domestic and foreign corporations, and clearly in this case property of the company beyond the jurisdiction of the State is not taxed."

To the same effect was the rule announced in St. Louis S. W. Ry. v. Arkansas, 235 U. S. 350. In the latter case, the court based its decision upon Postal Telegraph Cable Company v. Adams, 155 U. S. 688, l. c. 696, where Mr. Chief Justice Fuller said:

"But property in a State belonging to a corporation, whether foreign or domestic, engaged in foreign or interstate commerce, may be taxed, or a tax may be imposed on [fol. 63] the corporation on account of its property within a State, and may take the form of a tax for the privilege of exercising its franchises within the State, if the ascertainment of the amount is made dependent in fact on the value of its property situated within the State."

The court also cited the case of Atlantic &c Telephone Co. v. Philadelphia, 190 U. S. 160, where the principle is announced that a state is not prevented from imposing ordinary property taxes upon property having a situs within its territory, although it be employed in interstate commerce.

In Kansas City Ry. v. Kansas, 240 U. S. 227, the Supreme Court had a somewhat similar situation arising in the State of Kansas. Mr. Justice Hughes, delivering the opinion of the court, said:

"The authority of the state to tax this privilege, or franchise, has always been recognized and it is well settled that a tax of this sort is not necessarily rendered invalid because it is measured by capital stock which in part may represent property not subject to the State's taxing power."

In support of his opinion he cited the case of the Baltic Mining Co. v. Commonwealth of Massachusetts, 231 U. S. 68. This latter case dealt with questions very similar to the questions raised in the instant case.

In the case of Kansas City &c R. R. v. Stiles, 242 U. S. 111, the validity of an Alabama statute was questioned. A

similar tax had been provided for in that state. Mr. Justice Day, who delivered the opinion of the court, said, among other things:

"It is urged that this tax is void because it undertakes to tax property beyond the jurisdiction of the State, and imposes a direct burden upon interstate commerce. Ob- [fol. 64] jections of this character were so recently discussed, and the previous cases in this court considered, in Kansas City &c Railway Co. v. Kansas, 240 U. S. 227, that it would be superfluous to undertake extended discussion of the subject now. In that case, after a full review of the previous decisions in this court, it was held that each case must depend upon its own circumstances, and that while the State could not tax property beyond its borders, it might measure a tax within its authority by capital stock which in part represented property without the taxing power of the State. As to the objection based upon the due process clause of the Constitution, we think that principle controlling here. There is no attempt in this case to levy a property tax; a franchise tax within the authority of the State is in part measured by the capital stock representing property owned in other States."

In the case at bar, both domestic and non-domestic corporations are subject to the same tax. The State bases its tax upon the property of the corporation having its situs in Missouri exactly as in the case of domestic companies. To all intents and purposes, therefore, it would bring the instant case squarely within the decision of Roberts & Schaefer Co. v. Emmerson, supra. Moreover, an almost parallel case was determined by the Supreme Court of the United States in the case of Margay Oil Corporation v. Applegate, Attorney General, 273 U. S. 666. In that case, as in this, a Delaware Corporation, doing business in Arkansas, became subject to the Franchise Tax Law of that State. The complaint was made there, as here, to the effect that an arbitrary valuation was used as a basis for computing the tax. The Supreme Court of Arkansas in Margay Oil Corporation v. Applegate, Attorney General, 272 S. W. 845, sustained the tax and its judgment was affirmed in 273 U. S. 666. The affirmance of said case by the Supreme

Court was upon the authority of Roberts & Schaefer v. Emmerson, supra.

[fol. 65] 3. The attack upon the Corporation Act because of an alleged defect in its title is wholly without merit. Section 28 Article 4 of the Missouri Constitution forbids that any bill "shall contain more than one subject" and directs that such subject "shall be clearly expressed in its title."

The subject of the Act under consideration was authority to certain corporations to issue a variety of stocks; the regulation thereof; and "prescribing the method of determining the number of shares and capital of the corporations issuing shares in such manner."

Section 12 of the Act against which complaint is made is not a statute providing for taxes. It merely undertakes to provide a method of computing taxes upon corporations issuing stock withut nominal or par value. In providing for the issuance of such stock it was natural and proper for the Legislature to specify how same should be treated for taxation purpose. This was a part of the regulation mentioned in the title. It was part of the regulation stipulated in the title. It did no more than embody a rule clearly anticipated in the title and this rule became a formula in the hands of the State taxing authorities for computing a tax on both the domestic and foreign corporations.

In the matter of giving the stock in question a fanciful and unreal value, the statute is directed to the par value of all stocks without regard to actual value as a basis of computation. This might work inequitably in some cases as in this, but is not a matter with which we are concerned.

[fol. 66] In view of the above, the application for temporary injunction should be denied.

Kansas City, Missouri, November 2, 1928.

[File endorsement omitted.]

[fol. 67] In United States District Court

[Title omitted]

Order Denying Application for Temporary Injunction—Filed Nov. 2, 1928

The application of complainant for a temporary injunction being presented to a statutory court composed of the Honorable Kimbrough Stone, Circuit Judge, and the Honorable Albert L. Reeves, and the Honorable Merrill E. Otis, District Judges, and having been fully argued, presented and taken under submission and the court being fully advised in the premises, it is

Ordered that said application be and is hereby denied.

Dated this 2nd day of November, 1928.

Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Minute Entry of Filing Petition for Appeal, etc.—Nov. 19, 1928

This day comes the Complainant herein, by its counsel-[fol. 68] lors, and files a Petition for Appeal, together with its Assignment of Errors, Bond on Appeal, and Order allowing appeal to the Supreme Court of United States; thereupon, Citation is duly issued and signed by the Court, admonishing the defendants, Stratton Shartel and C. Eugene Stephens, to be and appear in the United States Supreme Court in the City of Washington, District of Columbia, thirty days from and after the day said citation bears date.

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL FROM ORDER DENYING INTERLOCUTORY INJUNCTION—Filed Nov. 19, 1928

To the Honorable Kimbrough Stone, Circuit Judge; Albert L. Reeves, District Judge, and Merrill E. Otis, District Judge:

Your petitioner, International Shoe Company, a corporation, complainant in the above entitled cause, believing itself aggrieved and injured by the order rendered and entered in the above entitled cause on the 2nd day of November, 1928, denying said complainant an interlocutory injunction in said cause, does hereby humbly pray an appeal from said order to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith.

Your petitioner further prays that a complete transcript of the record, proceedings and papers upon which said order was based and made be duly authenticated and sent to the Supreme Court of the United States for review.

And your petitioner will ever pray.

[fol. 69] International Shoe Company, Complainant, by Thompson & Thompson, James D. Williamson, R. E. Blake, Its Solicitors.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Nov. 19, 1928

Now comes International Shoe Company, complainant in the above entitled cause, and respectfully submits that in the records, proceedings and decisions of the District Court of the United States for the Central Division of the Western Judicial District of Missouri in the above entitled

matter and in the order therein denying complainant an interlocutory injunction there is manifest error in this, to-wit:

1. The Court erred in refusing and denying complainant's application for an interlocutory injunction preliminary to a final hearing enjoining defendants from enforcing, or attempting to enforce, against complainant the tax bill for $104,220.00 for complainant's corporation franchise taxes for the year ending December 31, 1928.

2. The Court erred in holding that the question of due process of law, absence of uniformity, taxation in proportion to value and equal protection of the law, had been settled in Roberts & Schaeffer Co. v. Emmerson, 271 U. S. 50 and other decisions.

[fol. 70] The Court erred in holding that the only Federal Constitutional question to determine was whether the franchise tax assessed against complainant was such a burden on interstate commerce as to warrant interference by the Court.

4. The Court erred in holding that the said tax in question is not in its effect a tax upon property.

5. The Court erred in holding that said tax had been measured by and based upon complainant's property having its situs in Missouri.

6. The Court erred in holding that said tax was not in effect a tax upon or measured by complainant's property not situated in Missouri.

7. The Court erred in holding that both domestic and non-domestic corporations are subject to the same franchise taxes.

8. The Court erred in refusing to hold that Section 12 of the Stock Corporation Act of Missouri, approved April 12, 1921 (Laws of Missouri 1921, pp. 661-666) as an amendment or supplement to the Corporation Franchise Tax Law of the State of Missouri (Sections 9836, to 9848, inclusive, Revised Statutes of Missouri, 1919, as amended by the Act approved August 4, 1921, and appearing in the Laws of Missouri Extra Session 1921, pp. 121-126, inclusive), and

said Corporation Franchise Tax Law as so supplemented and amended are in contravention of the Constitution of the United States, especially of the Interstate Commerce clause of Section 8, Article 1, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

9. The Court erred in refusing to hold that Section 12 of the Stock Corporation Act of Missouri (Laws of Missouri 1921, pp. 661-666) as interpreted and construed by the Supreme Court of Missouri in State v. Pierce Petroleum Corporation, 2 (2d) S. W. 790, insofar as it relates to the assessment of franchise taxes, is unconstitutional and void because it violates the Fourteenth Amendment of the Constitution of the United States in that in its effect and practical operation it imposes upon complainant a franchise tax that denies complainant the equal protection of the [fol. 71] law and that is confiscatory and taxes complainant's property without the state of Missouri, thereby depriving complainant of its property without due process of law.

10. The Court erred in refusing to hold that said Section 12 as interpreted and construed in said case of State v. Pierce Petroleum Corporation, insofar as it relates to the assessment of corporation franchise taxes, is unconstitutional and void because it violates Section 8 of Article 1 of the Constitution of the United States in that it imposes upon complainant a tax that burdens complainant's interstate commerce.

11. The Court erred in holding that said Section 12 as construed in said case of State v. Pierce Petroleum Corporation, insofar as it relates to the assessment of corporation franchise taxes, does not violate either Section 1 of the Fourteenth Amendment of the Constitution of the United States or Section 8 of Article 1 of the Constitution of the United States.

12. The Court erred in refusing to hold that Section 9836 of the Corporation Franchise Tax Law of Missouri (Laws of Missouri 1921, Extra Session, pp. 121-126) as amended and supplemented by Section 12 of the Stock Corporation Act as interpreted and construed in said case of State v. Pierce Petroleum Corporation is unconstitutional

and void because it violates the Fourteenth Amendment of the Constitution of the United States in that in its effect and practical operation it imposes upon complainant a franchise tax that denies complainant the equal protection of the law and that is confiscatory and taxes complainant's property without the State of Missouri, thereby depriving complainant of its property without due process of law.

13. The Court erred in refusing to hold that said Section 9836 of the Corporation Franchise Tax Law of Missouri, as amended and supplemented by said Section 12 of the Stock Corporation Act, as interpreted and construed in said case of State v. Pierce Petroleum Corporation, is unconstitutional and void because it violates Section 8 of [fol. 72] Article 1 of the Constitution of the United States in that it imposes upon complainant a tax that burdens complainant's interstate commerce.

14. The Court erred in holding that said Section 9836 of the Corporation Franchise Tax Law of Missouri, as amended and supplemented by said Section 12 of the Stock Corporation Act, as interpreted and construed in the said case of State v. Pierce Petroleum Corporation, does not violate either Section 1 of the Fourteenth Amendment of the Constitution of the United States or Section 8 of Article 1 of the Constitution of the United States.

15. The Court erred in refusing to hold that the tax bill issued against complainant and the Corporation Franchise taxes represented thereby, the action of the State Tax Commission in computing said taxes and of the State Auditor in making out said tax bill, are illegal, unconstitutional and void because they (a) deprive complainant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; (b) deny to complainant the equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; (c) burden complainant's interstate and foreign commerce, in violation of Section 8 of Article 1 of the Constitution of the United States, and (d) said taxes were assessed under said Corporation Franchise Tax Law and said Section 12 of said Stock Corporation Act interpreted and construed as

an amendment or supplement to said Franchise Tax Law as aforesaid, and said Corporation Franchise Tax Law and said Section 12 as so construed are unconstitutional and void in the particulars and for the reasons hereinbefore stated.

16. That said Section 12 of the said Stock Corporation Act, as an amendment and supplement to said Section 9836 of the Corporation Franchise Tax Law of the State of Missouri, does not provide a method for the taxation for franchise tax purposes of the proportion of the capital stock and surplus of foreign corporations (having no par stock) employed in business in the state of Missouri according [fol. 73] to its true value in money as applied by the Constitution of the State or by uniform rule as compared to other property in the State, but is really an intent to enforce against foreign corporations having no par stock the payment of a tax for the privilege of doing busines in such state by placing a fictitious value upon their capital stock and surplus employed within the State and in effect taxing their property beyond the State, and the Court erred in not so holding.

17. That the said assessment for franchise taxes made by the said State Tax Commission, and the tax bill as made out by the State Auditor of the State of Missouri against Complainant for the sum of $104,220.00, was not upon the true valuation in money, or the par value, of the proportion of complainant's capital stock and surplus employed in business in the State of Missouri, or upon any estimate of the value of the proportion of complainant's properties in the State of Missouri, but altogether upon the basis of other considerations, to-wit: An arbitrary or fictitious value of complainant's capital stock arrived at by multiplying the number of shares of its capital stock issued and outstanding, (3,760,000) by $100.00 per share, making a total of $376,000,000.00, and apportioning 54%, or $208,440,000.00 to the State of Missouri as the amount of capital stock and surplus employed in its business by complainant in said state, and figuring the franchise tax at one-twentieth of one per cent thereof, or $104,220.00, claiming and pretending that said sum so assessed represents the proportion of complainant's capital stock and surplus

employed within the State of Missouri, whereas said sum bears no relation to the true value of complainant's capital stock and surplus employed within said state, as its entire capital stock is $46,082,631.09, and its surplus is $52,956,249.12, making a total of $97,169,076.24, and the proportion employed in the State of Missouri is 54%, or $52,956,249.12; one-twentieth of one per cent of said amount is $26,478.12, and said franchise tax of $104,220.00 so assessed is nothing but an arbitrary assessment of a tax based on a fictitious or arbitrary value of complainant's [fol. 74] capital stock and surplus, apportioning 54% of such fictitious value to Missouri, without any reference whatever to the actual amount or value of capital stock and surplus employed by complainant in its business in the State of Missouri, and the Court erred in not so holding.

18. The arbitrary valuation of the shares of non par capital stock at $100.00 per share of a foreign corporation (whose shares have an actual value of $9.60) is not a reasonable basis for the determination of the proportion of capital stock and surplus employed in the State of Missouri for the purpose of the determination of annual fees to be imposes upon them for the privilege of doing business in the state, when the basis for the same privilege imposed on foreign corporation doing the same business, having a stock of par value is based on the par value of the proportion of such stock employed in the State of Missouri, and violates the equal protection clause of the Federal Constitution, and the Court erred in not so holding.

19. The franchise tax imposed upon complainant bears no relation whatever to the privilege granted it, a foreign corporation, to do business in the state of Missouri, and the Court erred in not enjoining the enforcement of such tax bill.

20. The Court erred in refusing to hold that said Section 12 of said Stock Corporation Act, as an amendment to said Section 9836 of the said Corporation Franchise Tax Law, is in contravention of the Constitution of the State of Missouri, especially of Section 30 of Article 2 providing that no person shall be deprived of property without due process of law, and of Section 3 of Article 10, providing that taxes shall be uniform upon the same class of subjects

within the state, and of Section 4 of Article 10 providing that all property subject to taxation shall be taxed in proportion to its value.

21. The Court erred in refusing to hold that said Section 12 of said Stock Corporation Act as an amendment to the said Corporation Franchise Tax Law is in contravention of the Constitution of the State of Missouri, especially Sec-
[fol. 75] tion 28 of Article 4, providing that no bill shall contain more than one subject, which shall be clearly expressed in its title, as in the title to said Stock Corporation Act no reference is made to corporation franchise taxes or to foreign corporations, and said Stock Corporation Act as construed contains more than one subject.

22. The Court erred in holding in its opinion and decision that a franchise tax is a mere "regulation" under the police powers of the state, and is covered and included in the word "regulate" as said word is used in the title of said Stock Corporation Act of 1921.

23. The Supreme Court of Missouri in the case of State ex rel. Marquette Hotel Investment Company v. State Tax Commission, 282 Mo. 213, held that corporation franchise taxes are taxes within the meaning of Sections 3 and 4 of Article 10 of the Constitution of Missouri, and shall be uniform and in proportion to the value of the property taxed, and this Court erred in not so holding.

And said complainant, International Shoe Company, says that it will rely on the foregoing Assignment of Erro-s in the prosecution of the appeal from the said order made and entered by this Honorable Court herein on the 2nd day of November, 1928, denying said complainant's application for an interlocutory injunction.

Wherefore said complainant, the appellant herein, prays that said order, denying complainant's application for an interlocutory injunction, be reversed, and for such other and further relief as the appellant may be entitled to obtain.

International Shoe Company, Complainant-Appellant, by Thompson & Thompson, James D. Williamson, R. E. Blake, Its Solicitors.

[File endorsement omitted.]

[fol. 76] Bond on Appeal for $1,000.00, approved and filed Nov. 19, 1928, omitted in printing.

[fol. 77] In United States District Court

[Title omitted]

Order Allowing Appeal—Filed Nov. 19, 1928

This cause coming on for further proceedings or attention upon the petition of the complainant International Shoe Company, praying an appeal to the Supreme Court of the United States from the order of this Court entered November 2, 1928, denying to complainant an interlocutory injunction, and the same being fully considered by the Court,

It is hereby ordered that an appeal to the Supreme Court of the United States from the order of this Court entered November 2, 1928 denying to complainant an interlocutory injunction be, and the same is hereby, allowed, and that a certified transcript of the record, exhibits, stipulations and all proceedings be duly authenticated and forthwith transmitted to said Supreme Court of the United States.

It is further ordered that the bond on appeal be fixed at the sum of One Thousand Dollars ($1000.00), and said bond in due form, with good and sufficient sureties thereon, being at this time presented, it is hereby approved and ordered filed as a part of the record in this case.

Dated this 19th day of November, 1928.

[fol. 78] Kimbrough Stone, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Minute Entry of Filing of Citation, etc.—Nov. 21, 1928

Comes now the plaintiff, by its solicitors, and files Citation with acknowledgment of service thereon, and there is also filed a Stipulation in re transcript of record.

IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE TRANSCRIPT OF RECORD—Filed Nov. 21, 1928

It is hereby stipulated and agreed by and between the parties to the above entitled cause, through their respective solicitors, that the Clerk of the Court shall certify the complete record in the above entitled cause to the Supreme Court of the United States.

International Shoe Company, Complainant, by Thompson & Thompson, James D. Williamson, R. [fol. 79] E. Blake, Its Solicitors. Stratton Shartel, Attorney-General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, Defendants, by Stratton Shartel, W. E. Sloat, Their Solicitors.

[File endorsement omitted.]

[fol. 80] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 81] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Dec. 13, 1928

Comes now International Shoe Company, a corporation, the plaintiff and appellant in the above entitled cause, by Guy A. Thompson, its Solicitor, and says that in its brief and argument in said Court in said cause it will rely upon the following points and propositions in support of its appeal, to-wit:

1. The Court erred in refusing and denying complainant's application for an interlocutory injunction preliminary to a final hearing enjoining defendants from enforcing, or attempting to enforce, against complaintant the tax bill for $104,220.00 for complainant's corporation franchise taxes for the year ending December 31, 1928.

2. The Court erred in holding that the questions of due process of law, absence of uniformity, taxation in proportion to value and equal protection of the law, had been settled in Roberts & Schaeffer Co. v. Emmerson, 271 U. S. 50 and other decisions.

3. The Court erred in holding that the only Federal Constitutional question to determine was whether the franchise tax assessed against complainant was such a burden on interstate commerce as to warrant interference by the Court.

[fol. 82] 4. The Court erred in holding that the said tax in question is not in its effect a tax upon property.

5. The Court erred in holding that said tax had been measured by and based upon complainant's property having its situs in Missouri.

6. The Court erred in holding that said tax was not in effect a tax upon or measured by complainant's property not situated in Missouri.

7. The Court erred in holding that both domestic and non-domestic corporations are subject to the same franchise taxes.

8. The Court erred in refusing to hold that Section 12 of the Stock Corporation Act of Missouri, approved April 12, 1921 (Laws of Missouri 1921, pp. 661-666) as an amendment or supplement to the Corporation Franchise Tax Law of the State of Missouri (Sections 9836 to 9848, inclusive, Revised Statutes of Missouri, 1919, as amended by the Act approved August 4, 1921, and appearing in the Laws of Missouri Extra Session 1921, pp. 121-126, inclusive), and said Corporation Franchise Tax Law as so supplemented and amended are in contravention of the Constitution of the United States, especially of the Interstate Commerce clause of Section 8, Article 1, and of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

9. The Court erred in refusing to hold that Section 12 of the Stock Corporation Act of Missouri (Laws of Missouri 1921, pp. 661-666) as interpreted and construed by the Supreme Court of Missouri in State v. Pierce Petroleum Corporation, 2 (2d) S. W. 790, insofar as it relates to the as-

sessment of franchise taxes, is unconstitutional and void [fol. 83] because it violates the Fourteenth Amendment of the Constitution of the United States in that in its effect and practical operation it imposes upon complainant a franchise tax that denies complainant the equal protection of the law and that is confiscatory and taxes complainant's property without the state of Missouri, thereby depriving complainant of its property without due process of law.

10. The Court erred in refusing to hold that said Section 12 as interpreted and construed in said case of State v. Pierce Petroleum Corporation, insofar as it relates to the assessment of corporation franchise taxes, is unconstitutional and void because it violates Section 8 of Article 1 of the Constitution of the United States in that it imposes upon complainant a tax that burdens complainant's interstate commerce.

11. The Court erred in holding that said Section 12 as construed in said case of State v. Pierce Petroleum Corporation, insofar as it relates to the assessment of corporation franchise taxes, does not violate either Section 1 of the Fourteenth Amendment of the Constitution of the United States or Section 8 of Article 1 of the Constitution of the United States.

12. The Court erred in refusing to hold that Section 9836 of the Corporation Franchise Tax Law of Missouri (Laws of Missouri 1921, Extra Session, pp. 121-126) as amended and supplemented by Section 12 of the Stock Corporation Act as interpreted and construed in said case of State v. Pierce Petroleum Corporation is unconstitutional and void because it violates the Fourteenth Amendment of the Constitution of the United States in that in its effect and practical operation it imposes upon complainant a franchise tax that denies complainant the equal protection of the law and that is confiscatory and taxes complainant's property without the State of Missouri, thereby depriving complain- [fol. 84] ant of its property without due process of law.

13. The Court erred in refusing to hold that said Section 9836 of the Corporation Franchise Tax Law of Missouri, as amended and supplemented by said Section 12 of the Stock Corporation Act, as interpreted and construed in said case of State v. Pierce Petroleum Corporation, is un-

constitutional and void because it violates Section 8 of Article 1 of the Constitution of the United States in that it imposes upon complainant a tax that burdens complainant's interstate commerce.

14. The Court erred in holding that said Section 9836 of the Corporation Franchise Tax Law of Missouri, as amended and supplemented by said Section 12 of the Stock Corporation Act, as interpreted and construed in the said case of State v. Pierce Petroleum Corporation, does not violate either Section 1 of the Fourteenth Amendment of the Constitution of the United States or Section 8 of Article 1 of the Constitution of the United States.

15. The Court erred in refusing to hold that the tax bills issued against complainant and the Corporation Franchise taxes represented thereby, the action of the State Tax Commission in computing said taxes and of the State Auditor in making out said tax bill, are illegal, unconstitutional and void because they (a) deprive complainant of its property without due process of law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; (b) deny to complainant the equal protection of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; (c) burden complainant's interstate and foreign commerce, in violation of Section 8 of Article 1 of the Constitution of the United States and (d) said taxes were assessed under said Cor- [fol. 85] poration Franchise Tax Law and said Section 12 of said Stock Corporation Act interpreted and construed as an amendment or supplement to said Franchise Tax Law as aforesaid, and said Corporation Franchise Tax Law and said Section 12 as so construed are unconstitutional and void in the particulars and for the reasons hereinbefore stated.

16. That said Section 12 of the said Stock Corporation Act, as an amendment and supplement to said Section 9836 of the Corporation Franchise Tax Law of the State of Missouri, does not provide a method for the taxation for franchise tax purposes of the proportion of the capital stock and surplus of foreign corporations (having no par stock) employed in business in the state of Missouri according to its true value in money as applied by the Constitution of

the State or by uniform rule as compared to other property in the State, but is really an intent to enforce against foreign corporations having no par stock the payment of a tax for the privilege of doing business in such state by placing a fictitious value upon their capital stock and surplus employed within the State and in effect taxing their property beyond the State, and the Court erred in not so holding.

17. That the said assessment for franchise taxes made by the said State Tax Commission, and the tax bill as made out by the State Auditor of the State of Missouri against Complainant for the sum of $104,220.00, was not upon the true valuation in money, or the par value, of the proportion of complainant's capital stock and surplus employed in business in the State of Missouri, or upon any estimate of the value of the proportion of complainant's properties in the State of Missouri, but altogether upon the basis of other considerations, to-wit; An arbitrary or fictitious value [fol. 86] of complainant's capital stock arrived at by multiplying the number of shares of its capital stock issued and outstanding (3,760,000) by $100.00 per share, making a total of $376,000,000.00, and apportioning 54%, or $208,440,000.00 to the State of Missouri as the amount of capital stock and surplus employed in its business by complainant in said state and figuring the franchise tax at one-twentieth of one per cent thereof, or $104,220.00, claiming and pretending that said sum so assessed represents the proportion of complainant's capital stock and surplus employed within the State of Missouri, whereas said sum bears no relation to the true value of complainant's capital stock and surplus employed within said state, as its entire capital stock *as its entire capital stock* is $46,082,631.09, and its surplus is $52,956,249.12, making a total of $97,169,076.24, and the proportion employed in the State of Missouri is 54%, or $52,956,249.12; one-twentieth of one per cent of said amount is $26,478.12, and said franchise tax of $104,220.00 so assessed is nothing but an arbitrary assessment of a tax based on a fictitious or arbitrary value of complainant's capital stock and surplus, apportioning 54% of such fictitious value to Missouri, without any reference whatever to the actual amount or value of capital stock and surplus

employed by complainant in its business in the State of Missouri, and the Court erred in not so holding.

18. The arbitrary valuation of the shares of non-par capital stock at $100.00 per share of a foreign corporation (whose shares have an actual value of $9.60) is not a reasonable basis for the determination of the proportion of capital stock and surplus employed in the State of Missouri for the purpose of the determination of annual fees to be imposed upon them for the privilege of doing business in the state, when the basis for the same privilege imposed [fol. 87] on foreign corporations doing the same business, having a stock of par value is based on the par value of the proportion of such stock employed in the State of Missouri, and violates the equal protection clause of the Federal Constitution, the Court erred in not so holding.

19. The franchise tax imposed upon complainant bears no relation whatever to the privilege granted it, a foreign corporation, to do business in the state of Missouri, and the Court erred in not enjoining the enforcement of such tax bill.

20. The Court erred in refusing to hold that said Section 21 of said Stock Corporation Act, as an amendment to said Section 9836 of the said Corporation Franchise Tax Law, is in contravention of the Constitution of the State of Missouri, especially of Section 30 of Article 2 providing that no person shall be deprived of property without due process of law, and of Section 3 of Article 10, providing that taxes shall be uniform upon the same class of subjects within the state, and of Section 4 of Article 10 providing that all property subject to taxation shall be taxed in proportion to its value.

21. The Court erred in refusing to hold that said Section 12 of said Stock Corporation Act as an amendment to the said Corporation Franchise Tax Law is in contravention of the Constitution of the State of Missouri, especially Section 28 of Article 4, providing that no bill shall contain more than one subject, which shall be clearly expressed in its title, as in the title to said Stock Corporation Act no reference is made to corporation franchise taxes or to foreign corporations, and said Stock Corporation Act as construed contains more than one subject.

22. The Court erred in holding in its opinion and de-
[fol. 88] cision that a franchise tax is a mere "regulation" under the word "regulate" as said word is used in the title of said Stock Corporation Act of 1921.

23. The Supreme Court of Missouri in the case of State ex rel Marquette Hotel Investment Company v. State Tax Commission, 282 Mo. 213, held that corporation franchise taxes are taxes within the meaning of Sections 3 and 4 of Article 10 of the Constitution of Missouri, and shall be uniform and inproportion to the value of the property taxed and this Court erred in not so holding.

Respectfully submitted.
Guy A. Thompson, Solicitor for Plaintiff-Appellant.

Comes now International Shoe Company, a corporation, plaintiff-appellant, in the above entitled cause, by Guy A. Thompson, its Solicitor, and designates the entire record for printing, omitting only the formal heading and other formal or immaterial part.

Respectfully submitted.
Guy A. Thompson, Solicitor for Plaintiff-Appellant.

The above defendants-respondents, Stratton Shartell, Attorney General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, by their Solicitors, acknowledge receipt of a copy of the foregoing statement of points to be relied upon and designation to print entire record, this 19th day of Nov., 1928.

[fols. 89 & 90] Stratton Shartell, Attorney General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri, by Stratton Shartell and W. E. Sloat, Their Solicitors.

[fol. 91] [File endorsement omitted.]

Endorsed on cover: File No. 33,888. W. Missouri D. C. U. S. Term No. 579. International Shoe Company, appellant, vs. Stratton Shartell, Attorney General of the State of Missouri, and C. Eugene Stephens, State Treasurer of the State of Missouri. Filed December 13th, 1928. File No. 33,888.